



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 20 जुलाई, 2010/29 आषाढ़, 1932

हिमाचल प्रदेश सरकार

HEALTH & FAMILY WELFARE DEPARTMENT

NOTIFICATION

Shimla, the 3rd July, 2010

No. HFW-B(A)3-3/85-II (Loose).—In exercise of the powers Conferred under Section-21 of the Dentists Act, 1948 (Act No.16 of 1948), the Governor of Himachal Pradesh is pleased to constitute the Himachal Pradesh State Dental Council as under :—

1. Under Section-21(A & B)

Following members have been elected from among themselves by the dentists registered in Part-A and B.

- (i) Dr.Kamal Jeet Singh S/o Sh.Harnam Singh
Village Adhwani, P.O.Jhaniara, Tehsil & Distt.Hamirpur, H.P.

- (ii) Dr.Aman Chauhan,
Anshul Bhawan Below Tunnel
Sanjauli, Shimla .
- (iii) Dr.Karam Jeet Singh Jaswal,
Sr. Lecturer Department of Periodontics,
HP, Govt. Dental College, Shimla .
- (iv) Dr.Gulab Singh Sharma,
C/o Varun Lodge Cemetary Road,
Sanjauli, Shimla.
- (v) Dr.O.P.Verma,
Village Lohanji Zero Point
Near Dev Raj STD,P.O.Kumharhatti,
Distt.Solan,HP.

2. Under Section-21(C)

All Heads(i.e. Principals following dental colleges, will be ex-officio member by virtue of their post:—

- (i) Principal, HP Govt. Dental College, Shimla .
- (ii) Principal Himachal Dental College, Sundernagar .
- (iii) Principal, Bhojia Dental College, Bhud Nalagarh.
- (iv) Principal MNDV Dental College Tatool Solan, HP.
- (v) Principal Himachal Institute of Dental Societies, Paonta Sahib, Distt. Sirmaur, HP.

3. Under Section-21(D)

Member elected from amongst themselves by the member of the Medical Council or the Council or the Council of Medical Registration of the State as the case may be Members U/S 21 (d).

(i) Yet to be elected by the Medical Council (separate notification will be issued on receiving the proposal).

4. Under Section-21(E)

Members nominated by the State Govt. Members U/s 21(e)

- (i) Dr.Hem Lata Sood, Director Dental Health Services, H.P.
- (ii) Dr.Pradeep Sood, Sr.Dental Surgeon,
Rural Hospital,Solan,H.P.
- (iii) Dr.Vikas Singh Rana,
Sr.Dental Surgeon, Zonal
Hospital Dharamsala,H.P.

5. **Under Section-(F)**

The Chief Medical Officer of the State, by whatever name called ex-officio

(i) Director of Health Services, HP(by virtue of post).

The HP State Dental Council will elect President and Vice President of the Council as per Section-25 of the Dentist Act,1948 . The term of the office of the members shall be regulated as per section-27 and regulation of the Dentist Act,1948.

By order,
Sd/-
Principal Secretary.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 59 of 2006.
Instituted on 6.5.2006.
Decided on. 17.2.2010.

Diljan Singh S/o Shri Parmatama Singh R/o Village Chandokha, P.O Shankerpur via Bayara, District Basti (UP) 272105 . . *Petitioner.*

Vs.

The Factory Manager, M/s Birla Textile Mills Baddi, Tehsil Nalagarh, District Solan, HP. . . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Ms. Veena sood, Ld. Csl.
For respondent: Shri Jagdish Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Diljan Singh S/o Shri Parmatama Singh workman by the Manager M/s Birla Textile Mills Baddi, District Solan HP w.e.f. 16.9.2004 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that the petitioner was working in the Spinning department of respondent wherein he met with an accident which happened during the working hours and the hand of the petitioner came in the machine resulting its amputation and the petitioner continued to work in the same department on the same job but the respondent management started harassing the petitioner for one reason or the another and also issued a false show cause notice and chargesheet regarding giving less production which was replied by the petitioner and that the respondent management on the basis of the show cause notice and chargesheet conducted an enquiry which was just an eyewash as the respondent management and the Enquiry Officer did not permit the petitioner to be represented through his co-worker and no documents, complaints and list of witnesses were supplied to the petitioner and no copies of enquiry proceedings were supplied. The Enquiry Officer used to entertain statements of the management witnesses which were already written by the witnesses and did not allow the petitioner to cross examine them. The petitioner was not allowed to put forth his case and also inspite of the petitioner protest in writing that the Enquiry Officer be changed as he was hand in gloves with the respondent management but the Enquiry Officer was not changed and the enquiry was conducted one sided, illegal and utter violation of the principle of natural justice, fair play and against the certified standing order of the respondent company and that the petitioner was also not given an opportunity by the Enquiry Officer to bring his witnesses and his evidence was closed and no enquiry report was given to the petitioner nor second show cause notice was given before terminating the services of the petitioner as the Enquiry Officer was a biased person, who was singing the tune of respondent and the services of the petitioner have

been illegally terminated as the petitioner suffered a disability of 50% on account of employment injury due to amputation of his right hand and the petitioner is unemployed from the date of his illegal termination and is totally dependent upon his relatives and parents for his livelihood and as such prayed for reinstatement in service with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia contending that the petitioner was served with a letter of chargesheet dated 1.3.2005 by the mill for the major acts of misconducts committed by the petitioner, who submitted his reply vide letter dated 14.4.2005 which was not found satisfactory and then domestic enquiry was conducted and the petitioner was informed about the constitution of the enquiry and the Enquiry Officer with place, date and time of the enquiry which was fixed for 27.4.2005 and the petitioner was also present and on 28.4.2005, the petitioner requested to be represented by one Shri Daljeet Singh, who was an outsider and on 29.4.2005 the petitioner stated that he did not wish to bring any representative and the witnesses of the management were examined and the petitioner was given an opportunity to cross examine the witnesses which the petitioner requested for time and on 30.4.2005, the petitioner cross examined the management witnesses at length and on 3.5.2005, the enquiry proceedings were adjourned to 6.5.2005 and further witnesses of management were examined but the petitioner refused to cross examine them, hence the management closed its evidence before the Enquiry Officer and the matter was fixed for the evidence of the petitioner and on 10.5.2005, the petitioner having the knowledge of the said date neither participated in the enquiry nor submitted any information regarding his absence and the matter was adjourned to 13.5.2005 but the petitioner did not participate in the enquiry and as such the enquiry was conducted ex parte on 16.5.2006 and that the Enquiry Officer submitted his findings and the charges levelled against the petitioner stand proved and a copy of findings of the Enquiry Officer was given to the petitioner on 30.5.2005 which was received by the petitioner on 6.6.2005 and that after consideration of enquiry report, the services of the petitioner were terminated on 22.8.2005 which is just, legal, proper, bonafide and warranted by the circumstances of the case. It is also contended that the petitioner was given lighter job in which also the norms of production were fixed and the petitioner could very well have given the requisite production despite his such disablement caused by the accident and the charges levelled against the petitioner were based on record which have been proved during the course of enquiry and that full opportunity was afforded to the petitioner to defend himself and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 17.8.2007 on the pleadings of the parties:

1. Whether the services of the petitioner have been illegally terminated by the respondent *w.e.f.* 16.9.2004 without complying with the provisions of I.D. Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..OPP
3. Whether a fair enquiry was conducted against the petitioner by the management/respondent? If so, its effect? ..OPR
4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- Issue No. 1. No.
 Issue No. 2. Not entitled to any relief.
 Issue No. 3. Yes.
 Relief. Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 & 3.

7. Both these issues are taken up and discussed together being co-related and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW1, who has stated that he was initially engaged as liner with the respondent in 1992 and then he worked in Spinning department to mix cotton where an accident took place during the working hours in 2003 and his right hand was amputated and after that he joined with the respondent in 2004 and after two months, he was terminated from service on the ground of giving less production and progress. The respondent had served a notice upon him regarding the less production of work done by him which was replied by him and since he was handicapped having one hand after the accident and as

such he was not in a position to give the production as he used to give before the accident and then the enquiry was conducted against him but no opportunity of being heard was given to him. He took his witnesses before the Enquiry Officer but they were not examined. He also made an application for change of the Enquiry Officer but in vain and after conducting the *exparte* enquiry, removed him from service. He was charge sheeted after one month from his removal and as such prayed for reinstatement in service with seniority and continuity including back wages.

8. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW1 Shri R.K Sharma General Manager has stated that he knows the petitioner, who was the employee/workman of the respondent, who was charge sheeted on account of negligent in duties, who used to give less production to the respondent, who was charge sheeted on the basis of report of Shri Ragu Nath Pandit, Supervisor and Kapil Pandit, Manager *vide* letter Ex. R1 & R2 upon which the warning was conveyed to the petitioner *vide* letter dated 30.10.2004 and 2.2.2005 Ex. R3 and R4 and then charge sheet Ex. RA was served upon the petitioner and the petitioner gave his reply *vide* Ex. RB which was not found satisfactory and then Shri A.K Sinha was appointed Enquiry Officer *vide* letter Ex. RC and then the petitioner was informed by the Enquiry Officer about the next proceeding *vide* letter Ex. RD and then the Enquiry Officer appointed Shri Vibhore Gupta as Presenting Officer *vide* letter Ex. R5.

9. RW2 Shri A.K Sinha Senior Manager, Personnel and Administration in M/s Birla Textile Ltd. Baddi District Solan has stated that he has been posted with the respondent since May, 1999. He is well conversant with the facts of the case and brought the record of the case. He knows the petitioner present in the Court, who was the workman of the respondent. He was appointed as an Enquiry Officer by the respondent *vide* Ex. RC for conducting enquiry against the petitioner. He informed the petitioner *vide* letter Ex. RD about the enquiry proceedings which was received by the petitioner in circle red. Shri Vibhore Gupta was appointed as Presenting Officer by the respondent *vide* letter Ex. R5. The petitioner made an application on 21.4.2005 Ex. R8 to conduct enquiry during working hours which was rejected by him on 27.4.2005. On 28.4.2005, the petitioner requested to engage his defence assistant outside the respondent company which was rejected by him being against the standing orders of the company. The petitioner attended the proceedings before him till 6.5.2005 and thereafter he did not appear before him on 10.5.2005 despite having knowledge. On 10.5.2005, he again sent a notice Ex. RF to the petitioner to appear before him on 13.5.2005 but the petitioner did not turn up on 13.5.2005. Again on 14.5.2005 he sent a letter to the petitioner *vide* Ex. RG to appear before him on 16.5.2005 but the petitioner refused to accept service and did not turn up and then the petitioner was proceeded against *exparte* and then the enquiry was conducted *exparte* and the *exparte* enquiry report is Ex. R11 which was prepared by him and he submitted the report to the management of respondent and after conducting the enquiry against the petitioner, he found him guilty and the charges were proved against him. The respondent examined S/Shri Vibhor Gupta, Kapil Pandit and Raghunath Pandit and their statements Ex. R12 to R14 were recorded by him during enquiry proceedings. Shri Vibhor Gupta was not cross-examined by the petitioner despite having afforded opportunity to him whereas Raghunath Pandit was cross examined by the petitioner. Shri Kapil Pandit was not cross examined by the petitioner as he himself gave the statement that he did not want to cross examine him. The statements of the witnesses also bear the signature of the petitioner and day to day proceedings of the enquiry is Ex. R15.

10. Ms. Veena Sood, learned counsel for the petitioner has vehemently argued at the very out set that the petitioner was victimized by the respondent management being handicapped workman and even no proper and fair enquiry was conducted against the petitioner and as such the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri Jagdish Thakur, learned counsel for the respondent has controverted the arguments of Ms. Sood and has submitted that the respondent has proved on record that legal, fair and proper domestic enquiry was conducted against the petitioner, who was found at fault, who did not work properly during the working hours, who did not give any progress, who was found negligent in his duties, who used to give less production to the respondent and the petitioner was allowed to work when he produced the fitness certificate from the doctor after the accident and even the petitioner is also getting disability pension from ESI regularly and got his free treatment from ESI and as such it does not lie in the mouth of the petitioner to say that he was victimized by the respondent company. The petitioner himself did not go on work, who found at fault in the enquiry and the petitioner admitted in his cross examination that he was properly informed to participate in the enquiry proceedings by the Enquiry Officer but he did not turn up, hence he was proceeded against *exparte* in the enquiry proceedings and he was found guilty by the disciplinary authority. Moreover, from the statement of petitioner as PW1, it is clear that he was properly served to appear before the Enquiry Officer but the petitioner did not appear before the enquiry Officer, hence the petitioner was proceeded against *exparte* and as such he has urged that since the petitioner intentionally avoided the service of notices and not participated in the enquiry, hence the principle of natural justice deemed to have been followed. To substantiate his arguments, he has relied upon **2008 LLR 449 S.C case titled as Board of Directors, HPTC and another Vs. K.C Rahi.**

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner is a handicapped having one hand, who is getting regular pension from ESI, who was offered job by the respondent on the production of the fitness certificate from Doctor but it appears that the petitioner was found negligent in his duties, who did not give proper production/progress of his work to the respondent management from time to time and then the show cause notice was issued to him and then domestic enquiry was conducted against him and proper notices for participation in the enquiry was served upon him but the petitioner did not appear before the Enquiry Officer, who was proceeded against exparte. It is significant to note that the petitioner has admitted as PW1 that he was served with show cause notice and the notices were served upon him by the Enquiry Officer from time to time to appear before him and therefore, it is clear from the record that the petitioner was in the know of the enquiry having been conducted against him, who willfully absented from the enquiry proceedings for the reasons best known to him. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court in 2008 LLR 449 S.C case titled as Board of Directors, HPTC and another Vs. K.C Rahi* in which it was held that:—

“High Court has erred in setting aside the order of the Tribunal interfering with the termination of respondent who has failed to participate in the enquiry despite that the notice of enquiry was published in the newspaper, Tribune and the enquiry was proceeded exparte. High Court in its writ jurisdiction cannot reappraise the evidence recorded by the Court of first instance.

“ When the delinquent employee has avoided to receive the notice and failed to participate in the enquiry despite publication in the newspaper, he cannot allege violation of principle of natural justice since ignorance of law is no excuse much less by a person who is a law graduate himself.”

It was further held in *2008 LLR 715 SC in case titled as Chairman and MD VSP and others Vs. Goparaju Sri Prabhakara Hari Babu* in which it was held that:—

“Where an employee failed to participate in the enquiry despite opportunity cannot complain about violation of principle of natural justice.”

Similarly in *2008 LLR 432 incase titled as Employers Management west Bokaro Colliery of TISCO Ltd. Vs. Concerned workman, Ram Parvesh Singh* in which it was held that:—

“In the absence of challenge to the legality of fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the Enquiry Officer or the punishment awarded by the punishing authority hence the order of dismissal of the workman is restored.”

“The standard of proof in disciplinary proceedings and criminal trial is entirely different since in the former, even the preponderance of possibilities are enough whereas in the latter, the proof should be beyond reasonal doubt.”

In the instant case, the petitioner was afforded sufficient opportunities to defend his case and to participate in the enquiry proceedings but despite notices, the petitioner did not turn up on 21.4.2005, subsequently on 27.4.2005, the petitioner appeared before the Enquiry Officer, who did not accept the allegations leveled against him and claimed trial and thus the enquiry was fixed for 28.4.2005 when the petitioner also appeared and filed an application for appointment of one Shri Daljeet Singh as his defence assistant, who was told that he could only appoint his co-worker and Daljeet Singh was outsider, hence his request could not be accepted and Shri Vibhore Gupta, Presenting Officer of the company made a request to record the statement of witnesses and to produce other record and the case was fixed for 29.4.2005. On 29.4.2005, both the parties appeared and the statement of PW Raghunath Pandit was recorded and the petitioner was asked to cross examine him but the petitioner requested for adjournment and then the enquiry was adjourned for 30.4.2005 by the Enquiry Officer. On 30.4.2005, the petitioner cross examined Raghunath Pandit and the enquiry was fixed for 3.5.2005 for remaining evidence of company. On 3.5.2005 both the parties appeared and the petitioner requested for adjournment due to urgent work which was allowed and the enquiry was adjourned for 6.5.2005. On 6.5.2005 both the parties appeared and the statement of Kapil Pandit was recorded but the petitioner refused to cross examine him and then the evidence of the company was closed and the enquiry was fixed for petitioner evidence for 10.5.2005 but on 10.5.2005 the petitioner did not appear despite knowledge nor any information was sent and then the enquiry was adjourned for 13.5.2005 and the petitioner was informed through Security Guard about the next date of hearing but the petitioner refused to accept the notice and then again the enquiry was adjourned for 16.5.2005 and the notice was given through Security Guard but the petitioner refused the same after reading it and then the notice was pasted on the factory gate and also on the notice board and since the petitioner intentionally avoided the services of the notices, hence proceeded against exparte by the Enquiry Officer on 10.5.2005. I have scrutinized the record of the case and observed that the petitioner was rightly and fairly proceeded against exparte by the Enquiry Officer after affording full opportunities to appear and participate in the enquiry time and again and therefore it does not lie in the mouth of the petitioner to say that there is a violation of principle of natural justice, who himself did not

participate in the enquiry despite affixation of notices on the factory gate and on the notice board of the respondent company and despite having full knowledge of the enquiry proceedings conducted against him on the appointed place, date and time.

14. Thus, having regard to the entire evidence on record, I am of the firm opinion that a fair and proper enquiry was conducted by the respondent management against the petitioner, who was found at default after conducting the enquiry, who was rightly removed from service by the respondent company after affording full opportunities of being heard to him and the petitioner cannot take advantage of the fact that he being the handicapped is victimized by the company especially when he is not giving any progress to the company being the workman of the company and as such the services of the petitioner have been legally terminated by the respondent company w.e.f. 16.9.2004. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue No. 2.

15. Since I have held under issue no.1 & 3 above that the services of the petitioner have been legally terminated by the respondent after conducting proper and fair domestic enquiry, hence the petitioner is not entitled to any relief. Accordingly, issue no. 2 is decided in favour of the respondent and against the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 17th Feb. 2010 in the presence of parties counsels.

J. S. MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

App.33(A)179/2002

11.1.2010

Sh. O.P.thakur & others V/s M.D.of M&C Fed, Ltd.

11.1.2010

Present : Petitioner with Shri J.L. Sharma ,Ld. Csl for applicant.
Sh Sandeep Mahajan, Ld Csl for respondent.

Heard. No PWs present . At this stage, learned counsel for petitioner submit at the bar that the petitioner does not want to pursue this case. Let the statement of Shri Deep ram, joint Secretary of the Super Bazar workers union be recorded on oath.

Statement recorded separately. I am satisfied that the petitioner Deep Ram is the Joint Secy, of the super Bazar workers union and as such is competent to make this statement, who has stated that they do not want to pursue this case further in the interest of the union and to maintain good and cordial relations with the respondents. Accordingly, the applicant under section 33a of the Industrial Disputes Act,1947 is dismissed as withdrawn, File , after completion, be consigned to records.

Announced
11.1.2010

Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 1 of 2008.
Instituted on. 7.1.2008.
Decided on. 8.3.2010.

Laxmi Devi D/o Shri Kanshi Ram R/o House no. 4142/15, Balmiki Basti, Nahan District Sirmour, HP.
...Petitioner.

Vs.

The Executive Engineer, HPSEB Division Nahan, District Sirmour, HP. . . Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Anil Kumar God, Ld. Csl.

For respondent: Shri Chandan Goel, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Km. Laxmi Devi D/o Shri Kanshi Ram ex part time sweeper by the Executive Engineer, HPSEB Division Nahan, District Sirmour, HP w.e.f. May, 1997 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was initially engaged under the respondent as part time sweeper in the month of December, 1990 till 12.5.1997 on a fixed wages of Rs. 130/- per month and the petitioner has been completed 240 days in each calendar year preceding her termination and that the respondent dispensed with the services of the petitioner without following the procedure as laid by law and the petitioner has been in continuous service under the respondent as per the provisions of section 25B of the Industrial Disputes Act, 1947 and that no notice nor retrenchment compensation was paid to the petitioner and even after the illegal retrenchment of the petitioner, the respondent engaged fresh hands into the employment which is the clear violation of section 25F, 2G & 25H of the Industrial Disputes Act, 1947 and that the disengagement of the petitioner is also in violation of rules of standing orders framed by the respondent and that after the illegal disengagement, the petitioner met with the authorities of the respondent for her reengagement but to no avail and as such prayed for reinstatement with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, having time barred and suppression of material facts. On merits, it is admitted that the petitioner worked as part time sweeper from Jan. 1991 to May, 1997, who was engaged on the daily wages of Rs. 4.30 per hour per day, who used to work for one hour in the morning. It is denied that the petitioner had worked for 240 days in each calendar year and even the petitioner was duly informed vide letter dated 12.5.1997 that her services would be terminated from 12.5.1997 and that no notice under section 25F of the Industrial Disputes Act, 1947 was required to be served upon the petitioner as she was on temporary basis. It is also denied that the petitioner met any official for her reengagement and as such prayed for the dismissal of claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 14.5.2009 on the pleadings of the parties.

1. Whether the termination of services of Laxmi Devi ex part time sweeperess by the Executive Engineer, HPSEB Nahan w.e.f. May, 1997 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ...OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation the petitioner is entitled to? ...OPP.
3. Whether the petition is not maintainable as alleged? ...OPR..

4. Whether the petition is hopelessly time barred?

...OPR..

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.

Issue No. 3 No.

Issue No. 4 No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issues 1.

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has sated that she was engaged as sweepress by the respondent in December, 1990 to May, 1997, who had worked with the respondent offices at Pakka Johar, Mall Road, Naya Bazar and Mehalat Office, Nahan. No notice nor compensation was given to her at the time of her removal. Her juniors are still continuing with the respondent, who are made regular but she does not know their names. She used to work throughout the day during her services. She had completed 240 working days in every calendar year preceding her termination and as such prayed for reinstatement in service with all consequential benefits.

9. To rebut the case of the petitioner, the respondent has examined Er. I.P Singh, Assistant Engineer, HPSEB Electrical Sub Division No.2 Nahan as RW1, who has stated that the petitioner was engaged as daily wages sweepress in Jan. 1991, who continued as such till May, 1997, who used to work for one hour daily @ 4.30 per hour and proved the mandays chart of the petitioner Ex. RA. The petitioner also filed an O.A before the Administrative Tribunal which was dismissed for want of jurisdiction, the copy of which is Ex. RB. The petitioner had never completed 240 working days in any calendar year preceding her termination and even notice Ex. RC was served upon the petitioner.

10. Shri Anil God, Ld. Counsel for the petitioner has vehemently argued at the very outset that the petitioner had completed 240 working days in twelve calendar months preceding her termination and her juniors are still continuing with the respondent and are made regular by the respondent whereas the petitioner was removed from service without following the provisions of section 25F, 25G & H of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri Chandan Goel, Ld. Counsel for respondent has controverted the arguments of Shri God and has submitted that the petitioner was rightly removed from service after giving notice Ex. RC, who was engaged as part time sweepress and not on daily wager, hence the petitioner is not entitled to any relief as prayed by her.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remain a fact that the petitioner was engaged as part time sweepress by the respondent, who worked with the respondent *w.e.f.* 1991 to May, 1997 as is evident from the mandays chart of the petitioner Ex. RA placed on record. No doubt, the respondent has tried to establish on record that the petitioner was engaged on part time basis only for one hour in a day, hence no notice under section 25F is required to be given to the petitioner at the time of her termination. I find no force in this contention as it was held by the Hon'ble Supreme Court incase titled as **DIV. MANAGER, NEW INDIA ASSURANCE CO. LTD. VERSUS A. SANKARALINGAM** in which it was held that:

“Workman - Termination - Continuous service -Part-time workman - Would be covered within the definition in section 2(s) of the Act -Entitled to benefit of continuous service u/s25B and benefit of section 25F of the Act.”

14. In the instant case, no notice nor any compensation was paid to the petitioner at the time of her termination and even no opportunity of being heard was afforded to the petitioner before her termination which is

illegal and contrary to the provisions of section 25F of the Industrial Disputes Act, 1947. I have also observed from the mandays chart Ex. RA that the petitioner had put in 122 hours from 1/97 to 5/97 which means that she has completed 122 days in the year 1997 even if she had worked one hour a day. I have scrutinized the mandays chart Ex. RA and observed that the petitioner had put in 336 hours in twelve calendar months preceding her termination *w.e.f.* 5/96 to 5/97 which means that she had completed 336 working days even if she had put in one hour a day and therefore the petitioner has fulfilled the basic requirement and protection of section 25F of the Industrial Disputes Act, 1947 as no notice nor compensation was paid to the petitioner at the time of her retrenchment which is not disputed by the respondent.

15. Thus, having regard to the above cited ruling and in view of the entire evidence on record, I have no hesitation in coming to the conclusion that the termination of services of the petitioner as part time sweepress by the respondent without complying the provisions of Industrial Disputes Act, 1947 is illegal and unjustified. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

16. Since I have held under issue No. 1 above that the services of the petitioner have been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as she has not placed any material on record to substantiate that she was not gainfully employed after her termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

17. In support of this issue, no evidence was led by the respondents nor it was pointed out during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4.

18. In support of this issue, no evidence was led by the respondent. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.* In which it was held that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith alongwith seniority and continuity. However the petitioner is not entitled to back wages as she has not placed any material on record to substantiate that she was not gainfully employed after her termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 8th March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla.

SH AMRISH SACHDEVA V/S M.D.M/S GOYAL MOTORS LTD, TARA DEVI SHIMLA.

3.3.2010:

Present: Petitioner with Shri R.K.Khidta. Ld Csl for petitioner.
Sh Rahul Mahajan, Ld . Csl .for respondent.

Heard. During the course of conciliation proceedings, the respondent counsel has delivered a cheque of Rs. 12,500/- (Twelve thousand Five Hundred only) as rs. 500/- in case in favour of the petitioner which has been accepted by Shri R. K. Khidta, Ld. Counsel for petitioner Let the statement of Shri R.K.Khidta Ld. Csl for petitioner be recorded.

Statement of Shri R.K.Khidta, Ld csl for petitioner.

Stated that I have received a cheque of rs.12,500/- (Twelve Thousand Five Hundred only) and Rs.500/- in case i.e. Rs.13,000/-

(Thirteen Thousand only) in toto on behalf of the petitioner being the full & Final settlement of his claim and as such the claim of the petitioner may be disposed of as satisfied.

R.O.&A.C

*Presiding Judge,
Labour Court, Shimla.*

Statement recorded separately. I am satisfied that the parties have arrived at a lawful compromise without any extraneous influence upon him and as such the claim of the petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced
3.3.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref. 49/2007

SHRI RAJ KUMAR V/S M.D.M/S CYBER PHARMA PVT,LTD BADDI.

16.3.2010

Present: Petitioner in person.
Shri Rakesh Sharma, Ld AR for respondent.

Heard. At this stage, petitioner submit before the court that he has already compromised the matter with the respondent after having accepted a sum of Rs.3,917/- after tendering his resignation and he is already employed in some other company. Let the statement of petitioner be recorded on oath.

Statement recorded separately. In view of his statement, I am satisfied that the parties have arrived at a lawful compromise and the petitioner tendered his resignation after receiving a sum of Rs.3,917/- being full and final settlement of his claim and as such the claim of the petitioner is dismissed as compromised as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette, File, after completion be consigned to records.

Announced
16.3.2010

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 54 of 2006.
Instituted on. 7.4.2006.
Decided on. 3.3.2010.

Om Parkash S/o Shri Nokh Ram R/o Village Durgapur, Tehsil Sunni, District Shimla, HP.

...Petitioner.

Vs.

1. The Managing Director, HP Tourism Development Corporation, Shimla 171001.
2. The Manager, Hotel Golf Galed, Naldehra, Tehsil & District Shimla HP.

. . Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Ld. Csl.

For respondent: Ms. Asha Vaid, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Om Parkash S/o Shri Nokh Ram workman by the (1) Managing Director, HP Tourism Development Corporation, Shimla 171001 (2) the Manager, Hotel Golf Galed, Naldehra, Tehsil & District Shimla HP. w.e.f. 1.10.1998 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was initially appointed as utility worker on daily wages basis on 26th May, 1994 at Hotel Golf Galed, Naldehra, who worked till June, 1999 and then the petitioner was orally terminated from service w.e.f. 1.7.1999 without assigning any cogent reasons and without paying retrenchment compensation and even the principle of last come first go under section 25G & 25H of the Industrial Disputes Act was not followed by the respondent and that the petitioner had completed 240 days in preceding calendar year from the date of his termination and that the petitioner has unblemished record of his service, who never gave an opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but to no avail and even the juniors S/Shri Raghubir Singh Jagar Ram, Kamal Narayan and Smt. Krishna Devi are still continuing with the respondent and that the respondent never charge sheeted the petitioner before the termination and that no seniority of the workmen was maintained by the respondent and that there was no occasion for the petitioner to leave his job when he was in dire need of job, the respondent has cooked up a false story so as to defeat the legitimate claim of the petitioner and as such prayed for reinstatement in service with retrospective effect with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondents resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of maintainability. On merits, it is contended that the petitioner was initially engaged as a utility worker on part time basis at Hotel Golf Glade, Naldehra in the year 1994, who was appointed on contract basis, hence the wrongful termination of services of the petitioner does not arise at all, who worked for four days in 1994, 49 days in 1996 and 181 days in 1998. It is denied that the petitioner had completed 240 days in each calendar year and that the services of the petitioner was only contractual, hence his services would automatically stand terminated and that the petitioner is not entitled to any retrenchment compensation on account of service rendered by the petitioner. It is further denied that the respondents recruited fresh hands into the employment and that the provisions of Industrial Disputes Act, 1947 are not applicable to the facts and circumstances of the case and as such prayed for the dismissal of the claim and the reply is supported by an affidavit.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 27.12.2007 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by the respondents w.e.f. 1.10.1998 without complying with the provisions of I.D Act, 1947? If so, its effect? ...OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.
3. Whether the present claim is not maintainable? If so, its effect? ...OPR..
4. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.
 Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.
 Issue No. 3 No.
 Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issues 1.

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as helper on daily wages with the respondent *w.e.f.* 26.5.1994 and continued as such till 1st July, 1999 and then he was terminated from service without any notice and without payment of compensation, who had worked for more than 240 working days with the respondent in every calendar year preceding his termination.

He had also worked with the President of India, who happened to visit Shimla from 16th June to 1st July, 1994 and his Section Officer has given him an appreciation letter mark A. His juniors Raghuvir Singh and Jagat Ram are still working with the respondent and as such prayed for reinstatement in service with all consequential benefits including back wages.

9. To rebut the case of the petitioner, the respondent has examined Shri Roop Chand Banot, Senior Manager, HPTDC, Kufri, Shimla as RW1, who has stated that he is authorized to make the statement vide Ex. RA. The petitioner was engaged as Masalchi/utility worker on 26.5.1994, who continued as such till 31.5.1994 at Golf Glade Naldehra and then the petitioner was reengaged in May, 1995 for 20 days and then from 15.6.1995 to 30.6.1995 for 36 days and then the petitioner was again engaged from 28.5.1996 to 31.5.1996 for four days and then from 1.6.1996 to 30.6.1996 for 30 days and then from 1.7.1996 to 15.7.1996 and as such the petitioner worked for 49 days in the year 1996 subject to the availability of work. The petitioner did not work even for a single day in the year 1997, who was reengaged from 23.4.1998 to 31.10.1998 with breaks and as such worked for 181 days in the year 1998. The petitioner had not completed 240 working days in any calendar year preceding his termination, who was engaged only for temporary work subject to availability of work from time to time. The petitioner was never terminated from service as they hired the services of the petitioner on contract basis and proved the agreements Ex. RB1 and Ex. RB2 and also proved the muster rolls of the petitioner Ex. RC1 to Ex. RC13 and as such the claim of the petitioner is false.

10. Shri J.R Sharma, Ld. Counsel for the petitioner vehemently argued at the very outset that though the petitioner could not prove on record that he had completed 240 working days in twelve calendar months preceding his termination but the petitioner has proved on record that his juniors Jagat Ram and Raghuvir Singh are still continuing with the respondents and are made regular by the respondents whereas the petitioner was removed from service without following the provisions of section 25F, 25G & H of the Industrial disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri G.S Bagga, Ld. Vice Counsel for respondents has controverted the arguments of Shri Sharma and has submitted that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar year preceding his termination and even the petitioner has also failed to prove on record that when his so called juniors Jagat Ram and Raghuvir Singh joined with the respondents nor placed any document to prove the same and as such he has urged that in the present set of evidence, the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner had worked with the respondents as masalchi/utility worker *w.e.f.* 26.5.1994 to 31.10.1998 as is evident from the statement of RW1 Shri Roop Chand Banot, who has categorically stated on oath that the petitioner had worked with the respondents as

masalchi/utility worker from 26.5.1994 to 31.10.1998 with breaks on contract basis. Thus, it is clear from the record that the petitioner had not worked for 240 working days with the respondents preceding his termination, hence no protection can be granted to the petitioner under section 25F of the Industrial Disputes Act, 1947.

14. Now, advertent to the other aspect to the case, the petitioner has proved on record that his juniors S/Shri Jagat Ram and Raghuvir Singh are still continuing with the respondent, who were engaged in the year 1996-97 as masalchi/utility worker whereas the petitioner was engaged as masalchi/utility worker on 26.5.1994 which fact has also been admitted by RW1 Shri Roop Chand Banot in his cross examination that S/Shri Jagat Ram and Raghuvir were engaged by the department as Masalchi/utility worker in 1996-97, who are now made regular by the respondent and obviously therefore it is proved on record that S/Shri Jagat Ram and Raghuvir are juniors to the petitioner, who are still continuing with the respondents and the services of the petitioner were terminated illegally and his termination is bad in utter violation of provisions of sections 25G & 25H of Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25G & 25H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

Thus, on the strength of the above cited rulings and in view of the entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated by the respondents without complying the provisions of Industrial Disputes Act, 1947 by retaining the juniors to the petitioner in the job, who are still continuing with the respondents and are made regular by ignoring the petitioner for the reasons best known to it. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

Issue No. 2.

15. Since I have held under issue No. 1 above that the services of the petitioner have been illegally terminated by the respondents without complying the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondents.

Issue No. 3

16. In support of this issue, no evidence was led by the respondents nor it was pointed out during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 3rd March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla

SH SURINDER SINGH V/S MANAGER M/S PRAGATI PAPER INDUSTRIAL KALA AMB DISTT SIRMOUR

16.3.2010:

Present: None for petitioner.

Ms. Veena Sood, Ld.Vice Csl for respondent.

No PWs present nor any steps taken. I am satisfied that sufficient opportunities have been afforded to the petitioner to produce his evidence but to no avail, hence the evidence of the petitioner closed by the order of the Court. Arguments heard. Heard. Since the petitioner has failed to produce any evidence to show that the action of the respondent to terminate the service of the petitioner w.e.f. 28.6.2004 after compliance of section 25F of the Industrial Disputes Act, 1947 is improper and unjustified and as such I have no alternate but to hold that the action of the respondent to terminate the services of the petitioner w.e.f. 28.6.2004 after compliance of section 25F of the Industrial Dispute Act, 1947 is proper and justified, hence the petitioner is not entitled to any service benefits and amount of compensation in any manner whatsoever and further more there is nothing on record which could show that the claim of the petitioner is not maintainable by his own act, deed, conduct and acquiescence and as such all the issues are decided in negative and as such the claim of the petitioner is dismissed for want of evidence and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced

16.3.2010

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref no. 70 of 2003.

Instituted on. 27.2.2003.

Decided on. 19.3.2010.

Shubhender Parsad S/o Shri Satya Dev Labh C/o Shri Alit Kumar (Shop-keeper) Village Judi Khurd, P.O Baddi, District Solan, Himachal Pradesh *...Petitioner.*

Vs.

The Factory Manager, M/s Deepak Spinners Ltd. Baddi, District Solan, HP.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Sharma, Ld. Csl.

For respondent: Shri Jagdish Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Shubhender Parsad S/o Shri Satya Dev labh by M/s Deepak Spinners Ltd. Baddi, District Solan, HP w.e.f. 21.9.2001 without complying with the provisions of sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits, the above workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was appointed as typist-cum-clerk in the respondent factory on 15.1.1988 and worked continuously with the respondent till 21.9.2001 and then the services of the petitioner were terminated illegally without compliance of the mandatory provisions of sections 25F, 25N, 25G and 25H of the Industrial Disputes Act, 1947 and that the petitioner worked with the respondent honestly, efficiently and to the best of his ability and that the respondent had not served any charge sheet nor any domestic enquiry was held against the petitioner and even no notice nor any compensation was paid to the petitioner at the time

of his termination and junior to the petitioner are still working and the respondent has not followed the procedure as per labour laws and that the termination of the petitioner is illegal, unlawful and unconstitutional and as such prayed for reinstatement in service with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability, abandonment and the petitioner has violated the standing orders of the company. On merits, it is contended that the petitioner was appointed as clerk-cum-typist @ 750/- per month and then he was assigned the duties of time office assistant and was getting Rs. 3325/- per month at the time of abandonment and that the services of the petitioner were never terminated by the respondent, who abandoned the job of his own and that the petitioner applied for earned leave w.e.f. 20.8.2001 to 20.9.2001 which was sanctioned by the competent authority and as such the petitioner was to report for duties on 21.9.2001 but the petitioner failed to report for duties and then the petitioner procured ESI sick leave from ESI Doctor from back date on 20.9.2001 and the same was extended from time to time till 13.11.2001 and if the petitioner was on sick leave till 13.11.2001 then how he presumed that his services have been terminated by the respondent on 21.9.2001 and even after the expiry of the sick leave, the petitioner did not report for duties nor he submitted his fitness certificate and that during the conciliation proceedings, the respondent offered the petitioner to join his duties or to receive full & final payment according to his writing on the back of leave application but the petitioner did not join nor received the full & final payment and then the respondent waited for a long time but the petitioner did not join his duties and on 12.12.2001, the petitioner was advised by the respondent to join his duties within three days but to no avail and then vide letter dated 28.12.2002, the petitioner was again asked to join his duties which the petitioner refused and vide letter dated 14.2.2003, it was communicated by the respondent that his services seemed to have abandoned as per certified standing orders. It is also contended that the petitioner was running a stationery article shop at Juddi Khurd which is very near to the staff colony of the respondent and that there was no need of issuing any charge sheet or intimation of enquiry as the petitioner has abandoned the job of his own, who himself failed to report for duties and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 8.12.2005 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by the respondent in violation of I.D Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.
3. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- | | |
|-------------|---|
| Issue No. 1 | Yes. |
| Issue No. 2 | Entitled for reinstatement in service with seniority and continuity but without back wages. |
| Relief. | Reference answered in affirmative per operative part of award. |

REASONS FOR FINDINGS

Issues 1.

8. Coming to this issue, the petitioner has examined two PWs in all. Petitioner Shubhender Parsad stepped into the witness box as PW1, who has stated that he was appointed as clerk-cumtypist by the respondent in Jan. 1988 at Baddi where he worked continuously till 2001 and then he applied for one month earned leave which was sanctioned and he also fell ill and then he applied for medical leave upto November, 2001 and fitness certificate was submitted by him on 24.11.2001. His leave application was taken but he was not permitted to enter in the factory. His services were illegally terminated without notice and compensation. He worked for 240 days in each year during his service. No enquiry nor chargesheet has been service up on him and the respondent company has engaged new persons who are still working and proved the medical certificate alongwith fitness Ex. P1 to Es. P7 and as such prayed for reinstatement with all benefits.

9. Shri Tarsem Lal appeared into the dock as PW2, who has stated that he run a STD booth at Juddi Khurd (Baddi) which does not belong to Subhender Parsad and proved the photocopy of licence to install, maintain and operate STD/ISD/pay phone as BSNL franchised PCO.

10. To rebut the case of the petitioner, the respondent examined two RWs in all. Shri Jai Bahadur Kaushik, Personnel Manager, Deepak Spinners Ltd. Baddi stepped into the dock as RW1, who has stated that the petitioner was engaged as typist since 15.1.1988, who proceeded on one month earned leave to visit his native place *w.e.f.* 20.8.2001 to 20.9.2001 but the petitioner did not report on 21.9.2001 and the petitioner extended his leave on medical ground till 13.11.2001 and during this period, the petitioner raised an Industrial Dispute on 3.11.2001 vide Ex. RB and they served a notice to the petitioner vide Ex. RF to which the petitioner refused to accept, the report of which is Ex. RF1 and then notice Ex. RG dated 28.12.2002 was served to the petitioner which was also refused by the petitioner vide Ex. RG1 and then final notice Ex. RD was issued to the petitioner as per certified standing orders *vide* Ex. RH.

11. RW2 Shri Pram Nath Pilly, Assistant Labour Officer, Deepak Spinner, Ltd. Baddi has stated on oath that he know Shri Dalip Singh Rathore, Peon, who was engaged in June, 2002 and worked till 1.6.2006. He had seen he noting and signature on Ex. RF & RG1 which are the signature of Dalip Singh Rathore. He had brought the attendance register which also bears the signature of Dalip Singh Rathore and the petitioner is gainfully employed after he abandoned the job of the respondent.

12. Shri O.P Sharma, Ld. Counsel for petitioner has vehemently argued at the very out set that the petitioner has proved on record that he has completed 240 working days in twelve calendar months preceding his termination and the petitioner was suffering from mental disorder on 14.1.2003 when he was terminated from service and even the application alongwith medical certificate was submitted to the respondent which was not accepted by them for the reasons best known to it. He has urged that no domestic enquiry was conducted against the petitioner by the respondent before his termination and even no notice nor compensation was given to the petitioner by the respondent and as such the petitioner is liable to be reinstated in service alongwith all consequential benefits. 10. On the contrary, Shri Sandeep Dutta Ld. Counsel for respondent controverted the arguments of Shri Shirshoo and has submitted that the petitioner has not completed 240 working days in twelve calendar months preceding his termination. He has also urged that the petitioner had submitted a false medical certificate of his absence whereas he was marked presence at the relevant time and therefore the claim of the petitioner is liable to be dismissed being false.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, the entire edifice of the petitioner case is rested upon his testimony, who has stated that he was engaged as daily wages beldar by the respondent in October, 1998 and worked as such till Jan. 2003 which fact has not disputed by the respondent. It is also borne out from the record that the petitioner has completed 240 working days in twelve calendar months preceding his termination but the petitioner resumed his duties on 15.9.2004 alongwith medical certificate but he was not allowed to join his duties as is evident from the statement of RW1 Er. N.S Guleria. It is significant to note that RW1 could not comment on the illness of the petitioner who has shown his ignorance as to whether junior to the petitioner are still continuing in service of respondent. It is also proved on record that the respondent has not taken any steps to resume the duties of petitioner. I have also observed that no domestic enquiry was conducted against the petitioner by the respondent even if the petitioner made default in appearance for quite long time who claims that he was suffering from mental disorder and when he recovered from his illness, he resumed his duties on 15.9.2004 alongwith his medical certificate but he was not allowed to join which amounts to unfair labour practice and further it is also proved on record that no notice nor retrenchment compensation was paid to the petitioner at the time of his termination.

13. Thus, having regard to the entire evidence on record I am of the firm opinion that the termination of services of petitioner by the respondent *w.e.f.* 14.1.2003 without following the provisions of Industrial disputes Act, 1947 is improper and unjustified as no opportunity of being heard was afforded to the petitioner by the respondent at any point of time. Accordingly, issue no. 1 is decided in favour of the petitioner and against the respondent.

Issue No. 2.

14. Since I have held under issue No. 1 above that the termination of the services of petitioner by the respondent *w.e.f.* 14.1.2003 without following the provisions of Industrial Disputes Act, 1947 is improper and unjustified, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages in view of the peculiar circumstances of case. Accordingly, issue No. 2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

15. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments. However, I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

16. In support of this issue no evidence was led by the respondent being the legal issue. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back wages in view of the peculiar circumstances of the case as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 17th March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla.

Ref.100/2009
27.3.2010

PRESEIDENT/GEN SECERY WORKERS UNION V/S M/S PUROLATOR INDIA LTD. PARWANOO

27.3.2010

Present: None for the petitioner.

Sh. Dushyant Dadwal, Ld Csl for respondent.

It is 12.15 PM, but no appearance put in by the petitioner of his counsel. Be awaited.

Presiding Judge,
Labour Court, Shimla.

27.3.2010

Present: None for the petitioner.

Sh. Dushyant Dadwal, Ld Csl for respondent.

It is 2.05 PM. Case is called out in pre and post lunch sessions but none appeared on behalf of the petitioner which clearly shows that the petitioner has no interest to pursue this case, hence the claim of the petitioner is Dismissed in default as a result of which the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced
27.3.2010

Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 101 of 2007.
Instituted on. 24.9.2007.
Decided on. 17.3.2010.

Ramesh Kumar S/o Shri Rangia Ram R/o Village Bharala, Tehsil Sunni, District Shimla, HP.

. . . Petitioner.

Vs.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Shashi Shirshoo, Ld. Csl.

For respondent: Shri Sandeep Dutta, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Ramesh Kumar S/o Shri Rangia Ram workman by the Commissioner, Municipal Corporation, Shimla-1 w.e.f. 14.1.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was engaged as daily wages beldar on muster roll basis with the respondent w.e.f. October, 1998 and worked continuously till Jan. 2003 whose services were terminated orally w.e.f. 14.1.2003 without complying the provisions of Industrial Disputes Act, 1947 as no notice under section 25F of the Industrial Disputes Act was served upon the petitioner nor any retrenchment compensation was given to the petitioner and that the petitioner has completed 240 days in each calendar year and even no enquiry was conducted against the petitioner prior to his retrenchment and even many fresh hands have been put to work by the respondent after retrenching the services of the petitioner which is in violation of section 25H of the Industrial Disputes Act and the principle of last come first go was not followed by the respondent and that the petitioner fell ill in the month of Jan. 2003, who could not join his duties till 15th Sept. 2004 and then the petitioner approached the JE alongwith joining report and medical certificate but he was not allowed to join his duties and that as per the provisions of Industrial Disputes Act and other provisions of service rules, the employer is bound to give the notice to the workman if he is not coming on work but in the case of the petitioner, no provision was followed by the respondent and that the respondent has flouted all cannons of law and abruptly dispensed with the services of the petitioner without assigning any reason and the action of the respondent is totally illegal, arbitrary and unconstitutional and as such prayed for reinstatement alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, having no cause of action and the claim is bad for issuance of mandatory notice under section 392 of HP MC Act, 1994. On merits, it is admitted that the petitioner has joined as beldar on daily wages with the respondent w.e.f. October, 1998 and worked till 14th Jan. 2003. It is denied that the services of the petitioner were terminated orally w.e.f. 14.1.2003, who left the job of his own and failed to join his services upto September, 2004 and the principle of first come last go is not applicable in this case as the petitioner left the job of his own and that the petitioner submitted an application on 15.9.2004 alongwith medical certificate w.e.f. 1.1.2003 to 15.9.2004 for 593 days and the medical certificate issued by the private Doctor is false, frivolous and wrong as during this period the petitioner was present on duty and as such prayed for the dismissal of the claim and the reply is supported by an affidavit.

4. No rejoinder filed. The following issues were framed by this court on 1.11.2008 on the pleadings of the parties.

1. Whether the termination of services of Shri Ramesh Kumar petitioner by the Commissioner M.C Shimla w.e.f. 14.1.2003 without complying with the provisions of I.D act, 1947 is improper & unjustified as alleged? .. OPP.

2. If issue no.1 is proved, to what service benefits and compensation the petitioner is entitled to? .. OPP.

3. Whether the claim is not maintainable in the present form? .. OPR.

Whether the claim is bad for want of mandatory notice under section 392 of M.C Act, 1994? .. OPR.

5. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Issue No. 4	Not proved.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issues 1.

7. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as beldar on daily wages by the respondent from October, 1998 and worked as such till Jan. 2003 and then he was removed from service without any notice nor paid retrenchment compensation at the time of his removal. After Jan. 2003, he was suffering from mental disorder, who remained under treatment *w.e.f.* 1.1.2003 to 15.9.2004. He submitted the applications regarding his illness to the concerned JE of the respondent corporation on 15.8.2003, 25.12.2003. He also made an application to the Principal Secretary Urban Development regarding his illness and for reengagement. He worked for more than 240 working days in a calendar year preceding his termination and as such prayed for reinstatement in service alongwith consequential benefits including back wages.

8. To rebut the case of the petitioner, the respondent examined RW1 Er. N.S Guleria, Additional Assistant Engineer, M.C Shimla, who has stated that the petitioner was engaged as Mazdoor on daily wages in October, 1998, who worked as such till 14.1.2003 and then abandoned the job of his own, who came to join his duties on 15.9.2004 alongwith his medical certificate of private practitioner but he was not allowed to join his duties and as such the claim of the petitioner is false.

9. Shri Shashi Shirshoo, Ld. Counsel for petitioner has vehemently argued at the very outset that the petitioner has proved on record that he has completed 240 working days in twelve calendar months preceding his termination and the petitioner was suffering from mental disorder on 14.1.2003 when he was terminated from service and even the application alongwith medical certificate was submitted to the respondent which was not accepted by them for the reasons best known to it. He has urged that no domestic enquiry was conducted against the petitioner by the respondent before his termination and even no notice nor compensation was given to the petitioner by the respondent and as such the petitioner is liable to be reinstated in service alongwith all consequential benefits.

10. On the contrary, Shri Sandeep Dutta Ld. Counsel for respondent controverted the arguments of Shri Shirshoo and has submitted that the petitioner has not completed 240 working days in twelve calendar months preceding his termination. He has also urged that the petitioner had submitted a false medical certificate of his absence whereas he was marked presence at the relevant time and therefore the claim of the petitioner is liable to be dismissed being false.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, the entire edifice of the petitioner case is rested upon his testimony, who has stated that he was engaged as daily wages beldar by the respondent in October, 1998 and worked as such till Jan. 2003 which fact has not disputed by the respondent. It is also borne out from the record that the petitioner has completed 240 working days in twelve calendar months preceding his termination but the petitioner resumed his duties on 15.9.2004 alongwith medical certificate but he was not allowed to join his duties as is evident from the statement of RW1 Er. N.S Guleria. It is significant to note that RW1 could not comment on the illness of the petitioner who has shown his ignorance as to whether junior to the petitioner are still continuing in service of respondent. It is also proved on record that the respondent has not taken any steps to resume the duties of petitioner. I have also observed that no domestic enquiry was conducted against the petitioner by the respondent even if the petitioner made default in appearance for quite long time who claims that he was suffering from mental disorder and when he recovered from his illness, he resumed his duties on 15.9.2004 alongwith his medical certificate but he was not allowed to join which amounts to unfair labour practice and further it is also proved on record that no notice nor retrenchment compensation was paid to the petitioner at the time of his termination.

13. Thus, having regard to the entire evidence on record I am of the firm opinion that the termination of services of petitioner by the respondent *w.e.f.* 14.1.2003 without following the provisions of Industrial disputes Act, 1947 is improper and unjustified as no opportunity of being heard was afforded to the petitioner by the respondent at any point of time. Accordingly, issue no. 1 is decided in favour of the petitioner and against the respondent.

Issue No. 2.

14. Since I have held under issue No. 1 above that the termination of the services of petitioner by the respondent *w.e.f.* 14.1.2003 without following the provisions of Industrial Disputes Act, 1947 is improper and unjustified, hence the petitioner is held entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages in view of the peculiar circumstances of case. Accordingly, issue No. 2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

15. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments. However, I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

16. In support of this issue no evidence was led by the respondent being the legal issue. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back wages in view of the peculiar circumstances of the case as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 17th March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla.

Ref. 115/2000

SH. SUKH RAM V/S SECY MANDI SAMITI P/SAHIB.

2.3.2010:

Present: None for petitioner.

Sh Naresh Gupta, Ld Csl for respondent.

Case is called out several times but none appeared on behalf of the petitioner. Shri Gupta, Learned counsel for respondent submits at the bar that the widow of the petitioner is also no more. In view of his statement at the bar and having regard to the fact that there is no LR of the petitioner survived to contest the claim of the petitioner, hence the claim of the petitioner is dismissed as abated as a result of which the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette.

File, after completion, be consigned to record.

Announced

2.3.2010

Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 131 of 2007.
Instituted on. 12.10.2007
Decided on. 6.3.2010.

1. Mohan Singh S/o Shri Heera Singh, VPO Bhujond, Tehsil Sangrah, District Sirmour, HP.

2. Narayan Singh S/o Shri Mangal Singh.
3. Chander S/o Shri Shiv Ram.
4. Hardev Singh S/o Shri Hira Singh.
5. Yash Pal Singh S/o Shri Ram Swaroop.
6. Geeta Ram S/o Shri Ram Bhaj.
7. Rama Nand S/o Shri Udai Ram.
8. Jalam S/o Shri Atma Ram.
9. Baldev Singh S/o Shri Deep Ram.
10. Satish Kumar S/o Shri Padam Dev.
11. Sada Nand S/o Shri Hardev Ram
12. Maya Ram S/o Shri Devi Ram.
13. Devinder Singh S/o Shri Bhag Chand.
14. Yashwant Singh S/o Shri Kripa Ram.
15. Birender Singh S/o Shri Daulat Ram.
16. Jodhvir Singh S/o Shri Mangat Ram.
17. Gopal Singh S/o Shri Ganga Ram.
18. Om Parkash S/o Shri Bhagat Ram.
19. Bhag Singh S/o Shri Zalim Singh.
20. Raghubir Singh S/o Shri Prem Singh.
21. Yashpal S/o Shri Krishan Lal.
22. Bharat Singh S/o Shri Bhag Singh

. . Petitioners.

Vs.

The Executive Engineer, HPPWD Division, Sangrah, District Sirmour, HP.

. . Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioners: Shri A.K Gupta, Ld. Csl.
 For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of S/Shri Mohan Singh & 21 other daily wager workmen by the Executive Engineer, HPPWD Division Sangrah District Sirmour, HP w.e.f. 2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?”

2. The petitioners have filed a statement of claim asserting therein that the petitioners were engaged on daily wages basis by the respondent in the year 1997, who continued upto 2002 when their services were disengaged without giving them notice and even no opportunity of being heard was afforded to them and the respondent resorted to give breaks in the services of the petitioners after every two-three months and new hands were employed and this game of substitution remained in force upto 2002 when their services were finally disengaged and then the petitioners approached the Administrative Tribunal where the O.A of the petitioners were dismissed on the ground that the petitioners have not completed 240 days of service and that as per section 25B (1) of the Industrial Disputes Act, 1947, the petitioner remained in continuous service from the date of their initial engagement till their services were disengaged and there were no instructions to the respondent to give the breaks in the services of the petitioners and to employ new hands and that the petitioners have completed 240 days of service in each calendar year and they cannot be denied the benefits of section 25F of the Industrial disputes Act, 1947 but the services of the petitioners were terminated without following the provisions of Industrial Disputes Act, 1947 which amounts to unfair labour practice and is not sustainable in the eyes of law and that the petitioners have not been gainfully employed any where after their disengagement and they are on the road and as such prayed for reinstatement in service alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioners, which filed reply interalia raising preliminary objections of maintainability being bad in the eyes of law, having no jurisdiction, barred by limitation, estoppel and the petitioners except Narayan Singh petitioner were engaged by the respondent department during the years 1997 to 99 as daily wages beldars and the petitioners worked with the respondent in such an irregular and careless manner, who have not completed 240 days continuous service in any calendar year, who left the job of their own during the year 2000-01 & 02 without assigning any cogent reason. On merits, it is contended that since the petitioners are not

entitled to any relief, hence they do not deserve to be reengaged and that the services of the petitioners were never retrenchment but they left the job of their own and as such prayed for the dismissal of the claim petition.

4. Rejoinder not filed. The following issues were framed by this court on 17.12.2008 on the pleadings of the parties.

1. Whether the termination of services of S/Shri Mohan Singh & 21 other daily wager workmen by the Executive Engineer, HPPWD Sangrah, District Sirmour w.e.f. 2002 without complying the provisions of I.D Act, 1947 is improper and unjustified as alleged? . . OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the above workmen are entitled to? . . OPP.
3. Whether the claim is not maintainable in the present form? . . OPR.
4. Relief.

5. I have heard the Ld. Counsel for petitioners and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No.4.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

7. Coming to this issue, the petitioners have examined petitioner Shri Baldev Singh as PW1, who has stated that he was engaged as daily wages beldar by the respondent alongwith other petitioners in May, 1998 and continued as such till October, 2002 and then their services were terminated by the respondent without notice and compensation. They also approached the Administrative Tribunal, where their petition was treated as representation but was dismissed. They were initially appointed for three months and then some new persons were appointed by the respondent and thereafter again they were appointed for three months and this process continued till 2002 in Sangrah Division only. They were appointed on permanent/maintenance muster roll and they did not abandon the job of their own. The fictional breaks were intentionally given by the respondent and they are unemployed after their termination and proved the mandays chart Ex. PA.

8. To rebut the case of the petitioners, the respondent has examined RW-1 Er. Yashpal Singh, who has stated that the petitioners were engaged in 1997-98 and continued as such till 2001-02 as per mandays chart Ex. RA to Ex. RU. The petitioner no.2 Narayan Singh was never engaged and the petitioners were never terminated from service but they abandoned the job of their own. No junior to the petitioners has been engaged nor continuing in service and as such the claim of the petitioners is wrong and false.

9. The case of the petitioners is that they being the daily wages beldar having been completed 240 working days in each calendar year and also in twelve calendar months preceding their termination were illegally terminated from service without any reason and no notice nor compensation was paid to them at the time of their removal and as such they are entitled to reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioners had worked as daily wages beldar from time to time, who were never terminated from service by the respondent, who left the job of their own without intimation to the department and even the petitioners had not completed 240 working days in any calendar year preceding their abandonment, hence the petitioners are not entitled to any relief as claimed by them.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioners were engaged as daily wages beldar by the respondent. Petitioner Mohan Singh was engaged in the year 1997 and worked till 2001, who

worked for 44 days in 1997, 180 ½ days in 1998, 195 days in 1999, 181 days in 2000 and 179 days in 2001. Petitioner Chander Dev had worked for 44 days in 1997, 167 days in 1998, 203 days in 1999, 179 days in 2000 and 179 days in 2003. Petitioner Hardev Singh had worked for 35 days in 1997, 149 ½ days in 1998, 178 days in 1999, 181 days in 2000, 179 days in 2001 and 31 days in 2002. Petitioner Yash Pal had worked for 146 days in 1998, 170 ½ days in 1999, 181 days in 2000, 179 days in 2001 and 31 days in 2002. Petitioner Gita Ram had worked for 9 days in 1997, 145 days in 1998, 168 days in 1999, 177 days in 2000, 180 days in 2001 and 31 days in 2002. Petitioner Rama Nand had worked for 150 days in 1998, 174 days in 1999, 179 days in 2000, 177 days in 2001 and 31 days in 2002. Petitioner Jalam Singh had worked for 44 days in 1997, 154 ½ days in 1998, 190 days in 1999, 168 days in 2000 and 159 days in 2001. Petitioner Baldev had worked for 138 days in 1998, 176 days in 1999, 178 days in 2000 and 175 ½ days in 2000. Petitioner Satish had worked for 9 days in 1997, 79 days in 1998, 158 days in 1999, 106 days in 2000 and 160 ½ days in 2001. Petitioner Sada Nand had worked for 83 days in 1998, 145 days in 1999, 174 days in 2000, 176 ½ days in 2001 and 30 days in 2002. Petitioner Maya Ram had worked for 9 days in 1997, 144 days in 1998, 172 days in 1999, 178 days in 2000 and 174 ½ days in 2001. Petitioner Devinder had worked for 211 days in 1998, 147 ½ days for 1999, 163 days for 2000 and 179 days for 2001. Petitioner Yashwant Singh had worked for 55 days in 1998, 162 days in 1999, 181 days in 2000, 178 days in 2001 and 29 ½ days in 2002. Petitioner Birender Singh had worked for 188 days in 1998, 129 days in 1999, 178 days in 2000, 177 days in 2001 and 31 days in 2002. Petitioner Jodhvir Singh had worked for 124 days in 1998, 188 days in 1999, 171 days in 2000 and 152 days in 2001. Petitioner Gopal Singh had worked for 137 days in 1998, 195 ½ days in 1999, 174 days in 2000 and 177 ½ days in 2001. Petitioner Om Parkash had worked for 9 days in 1997, 24 days in 1998, 191 ½ days in 1999 and 177 days in 2000. Petitioner Bhag Singh had worked for 185 days in 1998, 114 days in 1999, 177 days in 2000, 146 days in 2001 and 31 days in 2002. Petitioner Raghubir had worked for 56 days in 1998, 155 ½ days in 1999, 137 days in 2000 and 129 days in 2001. Petitioner Yashpal had worked for 165 days in 1998, 189 days in 1999, 96 days in 2000 and 102 ½ days in 2001. Petitioner Bhartu Ram had worked for 152 days in 1998, 194 ½ days in 1999, 126 days in 2000 and 116 ½ days in 2001 as is evident from the mandays charts of the petitioners Ex. RA to Ex. RU placed on record. No doubt, the petitioners have tried to establish on record that they had put in more than 240 working days of continuous service with the respondent in each and every calendar year preceding their termination but there is nothing on record which could show that the petitioners had worked with the respondent for 240 days in each calendar year and also in twelve calendar months preceding their termination. Since the petitioners have failed to prove on record that they had put in 240 working days in twelve calendar months preceding their termination as required under section 25F of the Industrial Disputes Act, 1947, hence the case of the petitioners does not fall under section 25-F of the Act. Moreover, it is well settled that where the workmen have not produced any evidence to show that they had worked for more than 240 working days in twelve calendar months preceding their termination and that no evidence has been led in order to show that their juniors are still working with the respondent, the petitioners are not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:—

“Incuse workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

13. Now, advertng to the other aspect of the case, the petitioners have also tried to establish on record that their juniors are still continuing with the respondent department but they did not prove on record that on which date they joined the department and infact they are the juniors to the petitioners. On the other hand, the respondent has proved on record that no junior to the petitioners is still continuing with the respondent and therefore, the case of petitioner cannot be accepted for their reinstatement under section 25G & 25H of the Industrial Disputes Act, 1947 for want of evidence on this point.

14. I have also observed that no petitioner Narayan Singh was never engaged by the respondent in HPPWD Nohradhar Division at any point of time.

15. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record, it can safely be concluded that the services of the petitioners have not been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947 especially when the petitioners had failed to prove on record that they had completed 240 working days in twelve calendar months preceding their termination. Accordingly, issue No. 1 is decided in favour of the respondent and against the petitioners.

Issue No. 2.

16. Since I have held under issue No. 1 above that the services of petitioners have not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947, hence the petitioners are not entitled to any claim of service benefits.

Accordingly, issue No. 2 is decided in favour of the respondent and against the petitioners.

Issue No. 3

17. In support of this issue, no evidence was led by the respondent nor it was pointed out as to how it is not maintainable in the present form during the course of arguments. However, I find nothing wrong with the claim of the petitioners which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioners fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 6th March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 141 of 2004.
Instituted on. 6.12.2004.
Decided on. 4.3.2010.

Chattar Singh S/o Shri Gurdia Ram C/o Shri J.C Bhardwaj, President HP AITUC HQ Saproon, District Solan,
HP. *...Petitioner.*

Vs.

The Executive Engineer, HPSEB division Rajgarh, District Sirmour, HP. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the removal from daily wage of Shri Chattar Singh S/o Shri Gurdia Ram w.e.f. 12.3.1997 by the Executive Engineer, HPSEB Division Rajgarh District Sirmour, HP vide his order dated 14.3.1997 is legal and justified? If not, to what seniority, service benefits and relief the concerned workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was employed in the respondent board during the month of June, 1981 whose services were illegally terminated on 12.3.1997 after continuous service tenure for the purpose of section 25B of the Industrial Disputes Act, 1947 as the petitioner has completed 240 days in the year 1981 and 1982 within preceding twelve calendar months and then the petitioner started giving fictional and artificial breaks by the respondent with the aim to evading section 25B of the Act. Moreover, it is clearly held by the Hon'ble High Court of HP in CWP no. 2207/95 that the petitioner had worked for more than 240 days in each calendar year during his service tenure vide its judgment annexure P1 vide which the petitioner was allowed to continue on the same post which he was holding before his termination on 16.10.1995 and the matter regarding working days till 1995 cannot be opened by the respondent having barred by resjudicata in view of the order of the Hon'ble High Court and that the then Executive Engineer had gone biased against the workman, who employed the petitioner for some time and then the petitioner was removed from service on 12.3.1997 on false and fabricated grounds only to teach lesson to the petitioner and served notice dated 1.5.1996 regarding his absence from duties since 16.1.1996 after the lapse of four months and again served with another notice on 17.12.1996 and then the services of

the petitioner were finally terminated on 12.3.1997 and that in the mean time the petitioner has also been ordered to be regularized by the Chief Engineer (operations) South Zone as well as by the Secretary of the Board and as such the name of the petitioner alongwith other co-workmen appeared in the selection list for regularization by the competent authority of the Board but the then Executive Engineer declined the regularization of the petitioner on the false ground which he has created by the false evidence that the petitioner was not in the employment of the respondent at the relevant time whereas his services were terminated by him and that the petitioner was never served with proper chargesheet against the alleged misconduct of absence from duties and even no notice of enquiry was served upon the petitioner and no enquiry was conducted against the petitioner and as such the petitioner was terminated in violation of section 25N/F of the Industrial Disputes Act, 1947 and that the petitioner is an illiterate and was ignorant due to lack of knowledge, who could not reply some of the notices served on him by the respondent but the petitioner approached all the authorities concerned orally as well as in writing with receipt and that the sudden removal of the petitioner from the employment has made the integrity of the workman doubtful in the eyes of one and all and that the petitioner is unemployed since the date of illegal termination and as such prayed for reinstatement with retrospective effect from the date of his illegal termination alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections having no enforceable cause of action and that no legal or vested right of the petitioner have been infringed or violated, barred by delay and laches, estoppel and that the petitioner was engaged as beldar w.e.f. 17.7.1981 and worked upto 15.10.1995 and then he abandoned the job of his own and most of the period absconded himself which is clear from annexure RA1 and the petitioner only worker for 406 days w.e.f. 1891 to 1995 and the petitioner is guilty for filing the wrong affidavit in the Hon'ble High Court in which the petitioner has wrongly stated having completed 240 days of service in each calendar year on the basis of which the petitioner was allowed to work in the same post which he was holding vide order dated 8.11.1995 and that the services of the petitioner were disengaged by the respondent w.e.f. 12.3.1997 as there were no more efficacious remedy available with the respondent to continue the engagement of the petitioner and even the petitioner is habitual of suppressing material facts about his long absence during his entire period of service w.e.f. 17.7.1981 to 15.10.1995 in which duration the petitioner worked only for 406 days and thereafter when the petitioner was reengaged w.e.f. 20.12.1995 to 15.1.1996 again remained willfully absent for eight months and sufficient opportunities have been afforded to the petitioner as per communications/notices issued in favour of the petitioner dated 1.5.1996, 2.9.1996, 3.9.1996, 10.10.1996 and 17.12.1996 but no response from the petitioner was received and then the office Incharge of the petitioner recommended the case of the petitioner for termination vide memo dated 28.1.1997 and that the termination of the petitioner has not been held wrong by the respondent in communication dated 12.3.1997 and the case of appointment of T-mate work charged was inadvertently approved by the respondent and the same has since been deleted vide office order dated 26.3.1999. The conduct of the petitioner during his tenure of service was undesirable and his omission and commissions during the service period cannot be condoned and even the petitioner is not fit for Board service. On merits, it is contended that the petitioner was reengaged by the respondent on the basis of order of Hon'ble High Court of HP on 20.12.1995 and the action of the respondent in disengaging the services of the petitioner on account of misconduct for long absence and non submission of reply of notices is perfectly legal and bonafide one and that the petitioner never completed 240 days in any calendar year and that the petitioner never met the respondent for his alleged termination and as such prayed for the dismissal of claim with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 27.6.2006 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by the respondent w.e.f. 12.3.1997? If so, its effect? . . . OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . . OPP.
3. Whether the present petition is not maintainable and is also barred by limitation? . . . OPR.
4. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.

Issue No. 3 No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issues 1.

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as beldar by the respondent in 1981 but he does not remember the month. He was removed by the respondent in 1995 but he does not remember the date of his removal and after his removal, he approached the Hon'ble High Court and then he was reinstated by the order of the Hon'ble High Court. He had completed 240 days prior to his removal in 1995, who was removed by the respondent on 12.3.1997 and then he approached the Administrative Tribunal where he was directed to approach this Court vide order Ex. PA. He raised the demand notice Ex. PB. He had gone to resume his duty when he received the notice from the respondent but they have not permitted him to resume his duties. He was regularized vide letter mark Z2 but he was not permitted to join. No notice nor compensation was given to him at the time of his termination. No enquiry was held against him at the time of his termination and as such prayed for reinstatement with all consequential benefits.

9. To rebut the case of the petitioner, the respondent has examined Er. K.S Banyal as RW1, who has stated that the petitioner was engaged as beldar on daily wages basis *w.e.f.* 1.6.1981 to 15.10.1995 and then he abandoned the job of his own, who approached the Hon'ble High Court which ordered the petitioner to join with the respondent and in pursuance of that order on 16.12.1995, the petitioner was reengaged in service and the petitioner worked for 26 days till 15.1.1996 and then the petitioner made default in appearance and subsequently joined in 8/96 and continued upto 15.9.1996 to seven days and thereafter abandoned the job of his own. They served letter to the petitioner to join but in vain and then the services of the petitioner were retrenched *vide* notice Ex. RA but without compensation. The petitioner had not completed 240 working days in twelve calendar months preceding his termination and as such the claim of the petitioner is wrong. 10. Shri J.C Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very outset that the petitioner has proved on record that he had completed 240 working days in twelve calendar months preceding his termination. To substantiate his arguments, he has drawn the attention of this Court to the order of Hon'ble High Court dated 8.11.1995 wherein the Hon'ble High Court has directed the respondent Board to allow the petitioner in the same post which he was holding and even the petitioner was ordered to be made regular on 20.8.1997 vide order of the Board Ex. P6 and as such he has urged that in the present set of evidence, the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Ms. Sharmila Patial, Ld. Counsel for respondent has controverted the arguments of Shri Bhardwaj and has submitted that though the petitioner was ordered to be made regular by the respondent Board but it was inadvertent mistake in the order which was corrected subsequently in the year 1999 which does not give rise to the inference that the petitioner had completed 240 working days in a calendar year preceding his termination and as such she has urged that in the present set of evidence, the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case and evidence on record, it is clear that the petitioner was made regular by the respondent vide order Ex. P6 in which the petitioner is placed at serial no. 4. It is not understandable as to how the petitioner was removed from service without conducting any domestic enquiry especially when the petitioner was made regular by the respondent Board. It is borne out from the record that no domestic enquiry was conducted against the petitioner and as such I find force in the contention of Ld. AR for petitioner that since the petitioner had completed 240 working days in twelve calendar months preceding his termination only then his case was recommended for regularization. No doubt, the Ld. Counsel for respondent tried to convince this court that it was clerical and typographical mistake of respondent Board which was rectified subsequently in the year 1999 but no such order has been placed on record which could show that it was clerical and typographical mistake and corrigendum to this effect was issued by the Board subsequently. Since I have observed earlier that no domestic enquiry was conducted against the petitioner by the respondent even if the petitioner had made default in appearance and did not report to his duties after 1996 as alleged by the respondent Board which amounts to unfair labour practice. It is also proved on record that termination notice Ex. RA was issued against the petitioner on 14.3.1997 whereas the petitioner was made regular on 2.1.1997. It is well settled by *Hon'ble Supreme Court in 1993 (1) SC Service Law Judgments 222* in which it was held that:

“Where there is retrenchment on the basis of absence from duty. A reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

14. Thus, having regard to the entire evidence on record and on the strength of above cited ruling, I am of the firm opinion that the respondent has failed to conduct domestic enquiry against the petitioner even if the petitioner was at fault due to absence from duties, who was made regular on the same year before two months ago. Had the petitioner been guilty of any misconduct of absence from duty, his case would not have been recommended for regularization which shows the malafide of the respondent Board and obviously therefore I have no hesitation in coming to the conclusion that the services of the petitioner has been illegally terminated by the respondent *w.e.f.* 12.3.1997. Accordingly this issue is decided in favour of petitioner and against the respondent.

Issue No. 2.

15. Since I have held under issue No. 1 above that the services of the petitioner have been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3.

16. In support of this issue, no evidence was led by the respondents being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form and I have also scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordships of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.* In which it was held that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that the petition is not barred by limitation and also maintainable in the present form and as such issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 4th March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN
*Presiding Judge,
Labour Court, Shimla*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 142 of 2007.
Instituted on. 12.11.2007.
Decided on. 5.3.2010.

Pawan Kumar S/o Shri Chet Ram R/o Village Ghandal, P.O Shakrah, Tehsil & District, Shimla, HP.

...Petitioner.

Vs.

The Secretary, HP Public Service Commission, Shimla-2

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Chauhan, Ld. Csl.
For respondent: Shri Neeraj, K Sharma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Pawan Kumar S/o Shri Chet Ram from the post of daily waged class-IV employee by the Secretary, HP Public Service Commission, Shimla-2 w.e.f. 30.9.1997 without complying the provisions of section 25F, 25G & 25H of the Industrial Disputes Act, 1947 is legal and justified? If not, what type of service benefits, seniority and compensation the concerned workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner is a matriculate and was registered with the Employment Exchange, who was engaged by the respondent on 20.5.1996 as daily wages workman against the available post and that after engagement, the petitioner discharged his duties to the entire satisfaction of the authorities, who was attached with one the then member of the Commission Ms. Bimla Bhagat and the petitioner refused to appear as witness in her favour in a case filed before the District Court by Shri Yash Pal and on this ground, the services of the petitioner were dispensed with orally on 30.9.1997 without any notice, charge sheet, enquiry and even no opportunity of being heard was afforded to the petitioner and as such the action of the respondent was arbitrary and violative of the provisions of Industrial disputes Act, 1947 and that in December, 1997 the respondent had engaged one Shri Ramesh Kumar in place of the petitioner to perform the duties which the petitioner was performing and that the respondent has recently appointed S/Shri Mangat Ram, Baldev, Prem Parkash, Manoj, Sanju and Bhoju to cope with the work of the respondent which clearly shows that a permanent nature of work is available with the respondent and that the petitioner had completed 240 days continuous service in a calendar year preceding his termination and that while dispensing with the services of the petitioner, no notice nor any retrenchment compensation was paid to him and as such prayed for reinstatement with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability as the Public Service commission is not an Industry and that the petitioner was engaged purely on temporary basis and that the petitioner has not impleaded Miss Bimla Bhagat and Shri Ramesh Kumar as party respondents, who are necessary parties and that the petition is time barred. On merits, it is denied that the petitioner was engaged as class-IV on daily wages basis against a sanctioned post on 20.5.1996, who was initially engaged purely on temporary/casual basis as he was engaged for 89 days on the basis of need of work and that the services of the petitioner were never terminated by the respondent, who remained absent w.e.f. 4.8.1997 onwards and the petitioner had charged Miss Bimla Bhagat the then member of HP Public Service Commission of his services orally on affidavit before the Administrative Tribunal and Hon'ble High Court which fact has been concealed by the petitioner with ulterior motive and even the dues as admissible to the petitioner has been paid to him as per orders of Administrative Tribunal. It is admitted that Shri Ramesh Chand had been engaged as daily wages class-IV worker through Employment Exchange in response to the requisition placed with the Employment Exchange in Himachal Pradesh on 18.5.1996 and the petitioner was also asked to get his name sponsored through Employment Exchange and since the name of the petitioner was not sponsored by the Employment Exchange, the petitioner was engaged for 89 days on the basis of need of work and that S/Shri Baldev, Sanju and Bhojo have been engaged as Class-IV daily wages workers by the respondent against three sanctioned post of daily wagers w.e.f. 22.6.2001, 20.1.2007 and 28.2.2007 respectively and Shri Manoj Kumar has been appointed as Chowkidar against the vacancy caused due to absorption of the services of the incumbent of the post in the office of Deputy Commissioner, Chamba after completing codal formalities and the services of Shri Mangat Ram and Prem Prakash were engaged through Employment Exchange w.e.f. 1.4.1995 and 26.8.1998, who were regularized w.e.f. 1.3.2006 and that the petitioner was initially engaged for 89 days on the basis of need of work. It is also admitted that the petitioner had completed 240 days in service but the petitioner remained wilful absent from the office and that the petitioner has failed to prove any proof of his termination nor the petitioner mentioned the name of the officer who had served notice of his termination and as such prayed for the dismissal of claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 5.11.2008 on the pleadings of the parties.

1. Whether the termination of services of Shri Pawan Kumar petitioner daily waged class-IV employee by the Secretary, HP Public Service Commission, Shimla-2 w.e.f. 30.9.1997 without

complying with the provisions of section 25F, 25G & 25H of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

.....OPP

2. If issue no.1 is proved, to what service benefits and amount of compensation the petitioner is entitled to?

.....OPP

3. Whether the petition is not maintainable as alleged?

.....OPR

4. Whether the petition is time barred?

.....OPR

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issues 1

8. Coming to this issue, the petitioner has examined two PWs in all. Petitioner Shri Pawan Kumar stepped into the witness box as PW1, who has stated that he was engaged as daily wages peon by the respondent on 20.5.1996 on the basis of application where he continued as such till 30th Sept. 1997 and then he was terminated from service orally without notice, charge sheet, enquiry and compensation. He had completed 240 working days in a calendar year preceding his termination. His juniors S/Shri Ramesh Kumar, Mangat Ram, Prem Prakash, Baldev Raj and Smt. Bhoja Devi were engaged by the respondent and they are still continuing with the respondent being regular workmen and as such prayed for reinstatement in service with all consequential benefits including back wages.

9. PW2 Shri Bhuteshwer Chauhan, Senior Assistant of respondent office has stated that the petitioner was engaged on 20.5.1996 as daily waged class-IV, who worked as such till 4th August, 1997 and they have engaged ten class-IV after Sept. 1997. Of them, there were two class-IV regular engaged by the respondent on compassionate grounds while three were direct regular class IV and five were engaged on daily wages and one of them left the job of his own and Ramesh Kumar was junior to the petitioner who was made regular. The petitioner has not completed 240 working days in twelve calendar months preceding his termination. No notice nor any compensation was paid to the petitioner at the time of his abandonment and no steps were taken to reengage the petitioner.

10. To rebut the case of the petitioner, the respondent has examined Shri P.S Draik, IAS, Secretary of the HP Public Service Commission, Shimla as RW1, who has stated that he has been posted as Secy. HP Public Service Commission, Nigam Vihar Shimla-2 since March, 2009 and is well conversant with the facts of the case. The petitioner was engaged as daily wages class-IV with the respondent on 20.5.1996, who continued as such till 4th August, 1997 and then the petitioner abandoned the job of his own and Shri Ramesh Chand is the junior to the petitioner who was engaged on 12.12.1996.

11. Shri O.P Chauhan, Ld. Counsel for the petitioner has vehemently argued at the very outset that the petitioner had completed 240 working days in twelve calendar months preceding his termination and his juniors are still continuing with the respondent and are made regular by the respondent whereas the petitioner was removed from service without following the provisions of section 25F, 25G & H of the Industrial disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

12. On the contrary, Shri Neeraj Kumar Sharma, Ld. Counsel for respondent has controverted the arguments of Shri Chauhan and has submitted that the respondent department does not fall under the definition of an Industry, hence this court has no jurisdiction to try this case. To substantiate his arguments he has relied upon (1997) 4

SCC 391. However, he has not challenged the 240 working days having been completed by the petitioner in twelve calendar months preceding his termination and further that his juniors are still continuing with the respondent.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, no doubt the respondent has tried to establish on record that this court has no jurisdiction to try this case. Ld. Counsel for respondent has relied upon *(1997) 4 SCC 391*. but the ratio of this ruling is not applicable to the present fact and circumstance of the case as the concept of retrenchment can be stretched to such an extent as to cover the petitioner as workman under the provisions of Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of ***Full Bench of Hon'ble Supreme Court reported in 1978 (2) SCC 213*** in which it was held that the educational institutions and research centres are Industries. It was further held by the Hon'ble Supreme Court in case titled ***Banglore Water Supply and Sewerage Board Vs. A. Rajappa as reported in 1978 Vol-1 LLJ-349*** in which it was held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of these judgments, it can safely be concluded that the respondent department is an Industry and governed by the Industrial Disputes Act, 1947 especially in case of the daily wages workers.

15. Now, advertent to the legal aspect of the case, it is clear that the respondent has not disputed that the petitioner has completed 240 working days in twelve calendar months preceding his termination. Apart from it, it is also fully proved on record that Ramesh Kumar junior to the petitioner is still continuing with the respondent, who was engaged on 12.12.1996 whereas the petitioner was engaged on 20.5.1996 as is evident from the statements of PW2 and RW1. Both these witness have categorically admitted that juniors to the petitioner are still continuing with the respondent and are made regular and no notice nor compensation was paid to the petitioner before his retrenchment which is illegal under the provisions of section 25G & H of the Industrial Disputes Act, 1947 and also against the principle of last come first go and the services of the petitioner were terminated illegally without following the mandatory provisions of section 25G & 25H of Industrial Disputes Act, 1947 by the respondent. Here I am fortified with a view taken by their lordships of ***Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC*** in which it was held that :

"Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages."

Similarly, our own Hon'ble High Court of HP has held incase titled as ***State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903***. in which it was held that :-

"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act."

Thus, having regard to the above cited rulings and in view of the entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2

16. Since I have held under issue no. 1 above that the services of the petitioner have been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No .3

17. In support of this issue, no evidence was led by the respondents nor it was pointed out during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No.4

18. In support of this issue, no evidence was led by the respondent. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their

lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another*. In which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service alongwith seniority and continuity from the date of his illegal retrenchment. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 5th March, 2010 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 177 of 2006.
Instituted on. 26.12.2006.
Decided on. 3.3.2010.

Revat Ram S/o Shri Jindu Ram C/o Shri Hari Dass, R/o Village Chakdayal, P.O Bhattakuffar via Sanjauli, Tehsil & District Shimla, HP.

....Petitioner

Vs.

The Secretary Kailash District Co-operative Marketing and Consumer Federation Ltd.-2, Commercial Building, the Mall Shimla.

....Respondent

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Aman Sood, Ld. Csl.
For respondent: Shri B.M Chauhan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Revat Ram S/o Shri Jindu Ram ex daily wages conductor by the Secretary the Kailash District Co-operative Marketing and Consumer Federation Ltd.-2, Commercial Building, The Mall Shimla w.e.f. 10.9.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner was employed as a conductor with respondent on 17.9.2000 on daily wages basis, who had been discharging his duties to the best of his ability till 19.9.2002, who had completed more than 240 days of his continuous employment in preceding year and that when the services of the petitioner were disengaged, the work of conductor was available with the respondent and even the juniors to the petitioner were retained and made regular by the respondent and the petitioner was disengaged from service by an oral order without paying any retrenchment compensation and that the petitioner after 19.9.2002 had been approaching the respondent for his reengagement but to no avail and that the petitioner had also issued legal notice to the respondent through his Advocate and then the proceedings were got initiated by the Labour-cum-Conciliation Officer, Shimla and after its failure the matter was sent to this Court for adjudication and that the action of the respondent is illegal, arbitrary, unlawful and discriminatory in disengaging the services of the petitioner smells of ulterior motive just to adjust and accommodate the favourites and juniors to the petitioner and that the respondent is habitual of levelling wrong, concocted allegations against the petitioner and even one point of time the driver of the Truck of the respondent presumably at the instance of respondent gave beatings to the petitioner and maltreated him and even the driver of the truck filed a false report at the instance of the respondent with the respondent which was duly replied and the same was defended by the petitioner and all this was being done with the petitioner so that he may leave the job and when the respondent federation failed to take any action, the services of the petitioner were disengaged orally without following the procedure of law and as such prayed that the petitioner is entitled to be reengaged from 19.9.2002 with full back wages @ Rs. 51/- per day and the services of the petitioner are also liable to be regularized as a conductor with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner had left the job of his own for better future prospects, who was engaged orally. It is denied that the petitioner had been discharging his duties to the best of his ability. It is also contended that there were various complaints against the petitioner with respect to his functioning as conductor as Shri Chain Ram Chauhan driver had written a complaint to the respondent about the misbehavior on the part of the petitioner while on duty in truck, who had further complained that it had become completely difficult for him to work with the petitioner and that he had never come across any such person under him as cleaner in his career of twenty years as driver and the petitioner used to give abusive language to him and also threatened to beat him and then a show cause notice was given to the petitioner. It is denied that any conductor had been regularized and made regular. The petitioner came to the office on 21.2.2003 and took the salary of 19 days for the month of Sept. 2002 for which period he worked and even the petitioner never made any representation to the respondent with respect to his alleged disengagement and if the

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 6.9.2007 on the pleadings of the parties.

1. Whether the services of the petitioner have been terminated illegally by the respondent w.e.f. 19.9.2002 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

OPP.....

3. Whether the petition is barred by limitation? If so, its effect?

OPR.....

4. Whether the petitioner himself abandoned the job? If so, its effect?

OPR.....

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

- | | |
|------------|---|
| Issue no.1 | Yes. |
| Issue no.2 | Entitled to reinstatement with seniority and continuity but without back wages. |
| Issue no.3 | No. |
| Issue no.4 | No. |
| Relief. | Reference answered in affirmative per operative part of award. |

REASONS FOR FINDINGS

Issues 1 & 4

8. Both these issues are taken up and discussed together being correlated and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner stepped into the witness box as PW1, who has stated that he was engaged as conductor with the respondent truck on daily wages on 17.9.2000 and continued as such till 19.9.2002, who had worked for more than 240 working days in a calendar year preceding his termination, who was removed from service after 19.9.2002 without any notice and compensation. He had a quarrel with the driver of the truck, who was always drunk and the driver also lodged a complaint against him. He also made a complaint against the driver to the respondent but no action was taken by the respondent and the show cause notice Ex. PA on the complaint of driver was received by him from respondent which was replied by him vide Ex. PB but no enquiry and chargesheet was made against him nor any opportunity of being heard was afforded to him before his termination. He also served a notice Ex. PC to the respondent, the postal receipt of which is Ex. PD and AD is Ex. PE. He also sent a copy to the Labour Officer, Shimla vide Ex. PF and AD is Ex. PG. He also sent a corrigendum notice to the respondent and the Labour Officer vide Ex. PH and UPC receipt is Ex. PI. He also visited the office of respondent for his reengagement but in vain. His juniors are still continuing, who are made regular by the respondent and as such prayed for reinstatement in service with all consequential benefits. He is an unemployed.

9. To rebut the case of the petitioner, the respondent has examined Shri Ramesh Sharma as RW1, who has stated that the petitioner was engaged as a cleaner in the truck of respondent federation in 2000, who worked for a year and then the driver of the truck made a complaint against the petitioner, who used to give wrong signals and was not fit for the work. The petitioner was not terminated from service, who himself abandoned the job and the petitioner had taken his entire dues from the respondent. The petitioner never approached the respondent for his reengagement, who filed the claim after three years and as such the claim of the petitioner is wrong.

10. Shri Aman sood, Ld. Counsel for the petitioner has vehemently argued at the very outset that the petitioner has amply proved on record that he has completed 240 working days in twelve calendar months preceding his termination as cleaner/conductor of the truck, who was removed from service on the false complaint of the driver of the truck but no notice nor any retrenchment compensation was paid to the petitioner at the time of his retrenchment nor any domestic enquiry was conducted against him by the respondent and since his retrenchment is bad in law for want of domestic enquiry, notice and compensation under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri Surinder Chauhan, Ld. vice Counsel for respondent has controverted the arguments of Shri Sood and has submitted that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar year preceding his termination and even the petitioner has abandoned the job of his own without any intimation to the respondent federation and as such in the present set of evidence, the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case and evidence on record, it is clear that the respondent has not disputed that the petitioner has completed 240 working days in twelve calendar months preceding his termination. The stand of the respondent is that the petitioner was never terminated from service, who abandoned the job of his own without any intimation but it remains a fact that no personal file of the petitioner was maintained by the respondent federation and even no domestic enquiry was ever conducted against the petitioner by the respondent. It is significant to note that when the explanation of the petitioner was called on the complaint of the truck driver no record was maintained by the respondent federation as stated by RW1 and thereafter the petitioner was removed from service. It is well settled by *Hon'ble Supreme Court in 1993 (1) SC Service Law Judgments 222* in which it was held that:

"Where there is retrenchment on the basis of misconduct. A reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."

14. It is also borne out from the record that the explanation of the petitioner was called vide notice Ex. PA and the reply Ex. PB was filed by the petitioner. The petitioner also sent a notice through his counsel to the Secretary Kailash District Co-operative Marketing and Consumer Federation, Ltd. vide which he prayed for reinstatement of his services. I find no force in the contention of the Ld. Counsel for respondent that the petitioner had abandoned the job of his own as the respondent has admitted as RW1 that they had served a explanation upon the petitioner and they did not maintain any file of the petitioner which shows that the services of the petitioner were terminated by the respondent and the petitioner never abandoned the job of his own. Since it has come on record that no domestic enquiry was conducted against the petitioner nor any opportunity of being heard was afforded to the petitioner before his termination from

service which is illegal and against the principle of natural justice and even before initiating any disciplinary action against the petitioner on the complaint of truck driver and that too without holding any domestic enquiry against the petitioner and moreover no notice nor retrenchment compensation was paid to the petitioner under section 25F of the Industrial Disputes Act, 1947 and obviously therefore, I have no hesitation in coming to the conclusion that the services of the petitioner have been terminated illegally by the respondent w.e.f. 19.9.2002 without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issues no. 1 & 4 are decided in favour of the respondent and against the petitioner.

Issue No.2

15. Since I have held under issues no. 1 & 4 above that the services of the petitioner have been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947, who never abandoned the job of his own, hence the petitioner is held entitled to be reinstated in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No.3

16. In support of this issue, no evidence was led by the respondents being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordships of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another*. In which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that the petition is not barred by limitation and as such this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 3rd March, 2010 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla.

Ref.241/2001

SH. MANGAL SINGH V/S M/S HIM KHADI GRAMOUDYOG ASHRAM
SOLAN

11.3.2010

Present:-

Petitioner with Sh. J.C. Bhardwaj, Ld Ar for petitioner.
Sh. Ramesh Aggarwal with Sh.O.P.Sharma, Ld. Csl for respondent.

Heard. The case stands compromised. Let the statement of
Shri J.C. Bhardwaj Ld.AR for petitioner be recorded.

Statement recorded separately. In view of his statement, I am satisfied that Shri J. C. Bhardwaj, Ld AR for petitioner has received a Cheque of Rs. 50,000/-(Fifty thousand only) payable at state Bank of patiala, Solan being the full and final settlement of the claim of the petitioner and as such the parties have arrived at a lawful compromise with out any extraneous influence upon them and as such the claim of he petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
11.3.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref.297/2001

SH. GEETA RAM V/S M.D.M/S AMAR PROMOTERS PVT. LTD SOLAN

11.3.2010

Present:- Petitioner with Sh. J.C. Bhardwaj, Ld Ar for petitioner.
Sh. Ramesh Aggarwal with Sh.O.P.Sharma, Ld. Csl for respondent.

Heard. The case stands compromised. Let the statement of
Shri J.C. Bhardwaj Ld.AR for petitioner be recorded.

Statement recorded separately. In view of his statement, I am satisfied that Shri J. C. Bhardwaj, Ld AR for petitioner has received a Cheque of Rs. 50,000/-(Fifty thousand only) payable at state Bank of patiala, Solan being the full and final settlement of the claim of the petitioner and as such the parties have arrived at a lawful compromise with out any extraneous influence upon them and as such the claim of the petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
11.3.2010

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 310 of 2002.
Instituted on. 3.10.2002.
Decided on. 2.3.2010.

Kuldeep Chand S/o Shri Chet Ram R/o Village Baga, P.O Darlaghat, Tehsil Arki, District Solan, HP.
..Petitioner.

Vs.

President, the Ambuja-Darlaghat-Kashlog-Mangu Parivahan Sehkari Sabha Samiti, Darlaghat, Tehsil Arki,
District Solan, HP. .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Chauhan, Ld. Csl.
For respondent: Shri Sandeep Mahajan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

2. The petitioner has filed a statement of claim asserting therein that the petitioner was employed as clerk w.e.f. 1.12.1995 by the respondent and was drawing salary of Rs. 2000/- per month lastly at the time of termination and that the respondent on 1.11.2000 terminated the services of the petitioner vide letter dated 31.10.2000 and at the same time the juniors and similarly situated persons were retained and that while dispensing with the services of the petitioner, no opportunity of being heard was afforded to him and no enquiry or chargesheet was served upon him and even the provisions of sections 25F, 25G and 25N of the Industrial Disputes Act, 1947 were violated by the respondent and that the petitioner had already completed the services of six years, who was doing the job honestly and to the entire satisfaction of the respondent whose services were terminated by the respondent by violating the basic provisions of law and that the termination of the petitioner has been resorted to which amounts to retrenchment and as such prayed for reinstatement in service with all benefits of seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, having no jurisdiction, barred by estoppel and time barred. On merits, it is denied that the services of the petitioner were terminated, who left the job of respondent and took up the job at another place and the petitioner has failed to give the necessary particulars in this regard, who concealed the facts and since the petitioner himself was at fault, hence the petitioner cannot raise a grievance by filing this petition after a lapse of three years and that the petitioner is guilty of distorting the facts whose services have not been terminated by the respondent. It is admitted that the petitioner served for almost six years and as such prayed for the dismissal of the claim with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 7.11.2005 on the pleadings of the parties.

1. Whether the petitioner has been illegally terminated by the respondent w.e.f. 31.10.2000 in violation of section 25F of the Industrial Disputes Act, 1947? . .OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . .OPP.
3. Whether the petition is not maintainable in the present form? . .OPR.
4. Whether this court has no jurisdiction in view of sections 72, 73 & 92 of the Cooperative Societies Act? . .OPR.
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Issue No. 4	Not proved.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he worked as clerk with Ambuja Kashlog Mangu Transport Cooperative society Darlaghat Tehsil Arki from 10.12.1995 to 31.10.2000 at the initial salary of Rs. 1200/- and then his salary was enhanced to Rs. 2800/- and on 31.10.2000 he was removed from service by giving letter without any compensation or charge sheet and without any reason and as such prayed for reinstatement in service with all consequential benefits as his removal is illegal. His juniors are still working with the respondent and there is availability of work with the respondent.

9. In rebuttal, the respondent has failed to appear before the court despite having been granted sufficient opportunities to produce their evidence but to no avail, hence the evidence of the respondent was closed by the order of the court.

10. Shri O.P Chauhan, Ld. counsel for the petitioner has vehemently argued at the very outset that the petitioner has been working with the respondent society as a clerk since 10.12.1995, who worked till 31.10.2000 whose services were terminated without serving any notice and payment of compensation. He has urged that the respondent has not denied this factum in their reply and as such the petitioner is entitled to be reinstated in service with seniority and continuity alongwith back wages.

11. On the contrary, Shri Sandeep Mahajan, Ld. Csl. for respondent has controverted the arguments of Shri Chauhan and has submitted that though the respondent could not bring his evidence but the petitioner is not entitled to back wages as his claim is not supported by an affidavit nor the petitioner has pleaded in his support of his claim that he is not employed after his termination.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent society as clerk on 10.12.1995, who continued as such till 31.10.2000 without any break, who was removed from service without any rhyme and reason and without any notice and without payment of compensation and as such his termination is bad in terms of section 25F of the Industrial Disputes Act, 1947. However, **Section 25-F of the 'Act' says that:**

-

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. In the instant case, the respondent has failed to comply with the provisions of section 25F before terminating the services of the petitioner and even no domestic enquiry was conducted against the petitioner by the respondent at any point of time and no notice nor retrenchment compensation in lieu thereof was given to the petitioner which is illegal, unjust and improper.

15. Thus, having regard to the entire un rebutted evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated w.e.f. 31.10.2000 by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2

16. Since I have held under issue No.1 above that the services of the petitioner have been wrongly and illegally terminated by the respondent w.e.f. 31.10.2000, hence the petitioner is held to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

17. In support of this issue, No evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

18. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to how the jurisdiction of this court is barred under section 72, 73 & 92 of the Cooperative Societies

Act. Since the petitioner is held to be a workman under section 2(s) of the Industrial disputes Act, 1947, hence this court has got jurisdiction to try this reference and claim of the petitioner. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 2nd March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN.
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 311 of 2002.
Instituted on. 3.10.2002.
Decided on. 2.3.2010.

Lekh Raj S/o Shri Chet Ram R/o Village Baga, P.O Darlaghat, Tehsil Arki, District Solan, HP. . .Petitioner.

Vs.

President, The Ambuja-Darlaghat-Kashlog-Mangu Parivahan Sehkari Sabha Samiti, Darlaghat, Tehsil Arki,
District Solan, HP. . .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Chauhan, Ld. Csl.

For respondent: Shri Sandeep Mahajan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

2. The petitioner has filed a statement of claim asserting therein that the petitioner was employed as driver w.e.f. 1.6.1998 and on 31.10.2000 terminated the services of the petitioner vide letter dated 31.10.2000 and at the same time the juniors and similarly situated persons were retained and that while dispensing with the services of the petitioner, No opportunity of being heard was afforded to him and no enquiry or chargesheet was served upon him and even the provisions of sections 25F, 25G and 25N of the Industrial Disputes Act, 1947 were violated by the respondent and that the petitioner had already completed the services of three years, who was doing the job honestly and to the entire satisfaction of the respondent whose services were terminated by the respondent by violating the basic provisions of law and that the termination of the petitioner has been resorted to which amounts to retrenchment and as such prayed for reinstatement in service with all benefits of seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability, having no jurisdiction, barred by estoppel and time barred. On merits, it is denied that the services of the petitioner were terminated, who left the job of respondent and took up the job at another place and the petitioner has failed to give the necessary particulars in this regard, who concealed the facts and since the petitioner himself was at fault, hence the petitioner cannot raise a grievance by filing this petition after a lapse of three years and that the petitioner is guilty of distorting the facts whose services have not been terminated by the respondent. It is admitted that the petitioner served for almost three years and as such prayed for the dismissal of the claim with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 7.11.2005 on the pleadings of the parties.

1. Whether the petitioner has been illegally terminated by the respondent w.e.f. 31.10.2000 in violation of section 25F of the Industrial Disputes Act, 1947?
..OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP.
3. Whether the petition is not maintainable in the present form? ..OPR.
4. Whether this court has no jurisdiction in view of sections 72, 73 & 92 of the Cooperative Societies Act? ..OPR.
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Issue No.4	Not proved.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he worked as driver with Ambuja Kashlog Mangu Transport Cooperative society Darlaghat Tehsil Arki in the year 1997 and worked as such till 31.10.2000 at the initial salary of Rs. 2200/- + TA per month and on 31.10.2000 he was removed from service by giving letter without any compensation or charge sheet and without any reason and as such prayed for reinstatement in service with all consequential benefits as his removal is illegal. His juniors are still working with the respondent.

9. In rebuttal, the respondent has failed to appear before the court despite having been granted sufficient opportunities to produce their evidence but to no avail, hence the evidence of the respondent was closed by the order of the court.

10. Shri O.P Chauhan, Ld. counsel for the petitioner has vehemently argued at the very outset that the petitioner has been working with the respondent society as a driver since 1997, who worked till 31.10.2000 whose services were terminated without serving any notice and payment of compensation. He has urged that the respondent has not denied this factum in their reply and as such the petitioner is entitled to be reinstated in service with seniority and continuity alongwith back wages.

11. On the contrary, Shri Sandeep Mahajan, Ld. Csl. for respondent has controverted the arguments of Shri Chauhan and has submitted that though the respondent could not bring his evidence but the petitioner is not entitled to back wages as his claim is not supported by an affidavit nor the petitioner has pleaded in support of his claim that he is not employed after his termination.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent society as a driver on 1.6.1998, who continued as such till 31.10.2000 without any break, who was removed from service without any rhyme and reason and without any notice and without payment of compensation and as such his termination is bad in terms of section 25F of the Industrial Disputes Act, 1947. However, **Section 25-F of the 'Act'** says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. In the instant case, the respondent has failed to comply with the provisions of section 25F before terminating the services of the petitioner and even no domestic enquiry was conducted against the petitioner by the respondent at any point of time and no notice nor retrenchment compensation in lieu thereof was given to the petitioner which is illegal, unjust and improper.

15. Thus, having regard to the entire un rebutted evidence on record I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated w.e.f. 31.10.2000 by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2

16. Since I have held under issue No.1 above that the services of the petitioner have been wrongly and illegally terminated by the respondent w.e.f. 31.10.2000, hence the petitioner is held to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

17. In support of this issue, No evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

18. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to how the jurisdiction of this court is barred under section 72, 73 & 92 of the Cooperative Societies Act. Since the petitioner is held to be a workman under section 2(s) of the Industrial disputes Act, 1947, hence this court has got jurisdiction to try this reference and the claim of the petitioner. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 2nd March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 312 of 2002.
Instituted on. 3.10.2002.
Decided on. 2.3.2010.

Ashok Kumar S/o Shri Kanhya Lal R/o Village & P.O Kashlog, Tehsil Arki, District Solan, HP. . .Petitioner.

Vs.

President, the Ambuja-Darlaghat-Kashlog-Mangu Parivahan Sehkari Sabha Samiti, Darlaghat, Tehsil Arki, District Solan, HP. . .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Chauhan, Ld. Csl.
For respondent: Shri Sandeep Mahajan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

2. The petitioner has filed a statement of claim asserting therein that the petitioner was employed as clerk w.e.f. 15.1.1996 by the respondent and was drawing salary of Rs. 2800/- per month lastly at the time of termination and that the respondent on 31.10.2000 terminated the services of the petitioner vide letter dated 31.10.2000 and at the same time the juniors and similarly situated persons were retained and that while dispensing with the services of the petitioner, no opportunity of being heard was afforded to him and no enquiry or chargesheet was served upon him and even the provisions of sections 25F, 25G and 25N of the Industrial Disputes Act, 1947 were violated by the respondent and that the petitioner had already completed the services of five years, who was doing the job honestly and to the entire satisfaction of the respondent whose services were terminated by the respondent by violating the basic provisions of law and that the termination of the petitioner has been resorted to which amounts to retrenchment and as such prayed for reinstatement in service with all benefits of seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, having no jurisdiction, barred by estoppel and time barred. On merits, it is denied that the services of the petitioner were terminated, who left the job of respondent and took up the job at another place and the petitioner has failed to give the necessary particulars in this regard, who concealed the facts and since the petitioner himself was at fault, hence the petitioner cannot raise a grievance by filing this petition after a lapse of three years and that the petitioner is guilty of distorting the facts whose services have not been terminated by the respondent. It is admitted that the petitioner served for almost five years and as such prayed for the dismissal of the claim with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 7.11.2005 on the pleadings of the parties.

1. Whether the petitioner has been illegally terminated by the respondent w.e.f. 31.10.2000 in violation of section 25F of the Industrial Disputes Act, 1947? . .OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . .OPP.

3. Whether the petition is not maintainable in the present form? . .OPR.

4. Whether this court has no jurisdiction in view of sections 72, 73 & 92 of the Cooperative Societies Act? . .OPR.

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Issue No.4	Not proved.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Coming to this issue, the petitioner stepped into the witness box as PW1, who has stated that he worked as clerk with Ambuja Kashlog Mangu Transport Cooperative society Darlaghat Tehsil Arki from 15.1.1996 to 31.10.2000 at the initial salary of Rs. 1200/- per month and then his salary was enhanced to Rs. 2800/- being last payment and on 31.10.2000 he was removed from service by giving letter without any compensation or charge sheet and without any reason and as such prayed for reinstatement in service with all consequential benefits as his removal is illegal.

9. In rebuttal, the respondent has failed to appear before the court despite having been granted sufficient opportunities to produce their evidence but to no avail, hence the evidence of the respondent was closed by the order of the court.

10. Shri O.P Chauhan, Ld. counsel for the petitioner has vehemently argued at the very out set that the petitioner has been working with the respondent society as a clerk since 15.1.1996, who worked till 31.10.2000 whose services were terminated without serving any notice and payment of compensation. He has urged that the respondent has not denied this factum in their reply and as such the petitioner is entitled to be reinstated in service with seniority and continuity alongwith back wages.

11. On the contrary, Shri Sandeep Mahajan, Ld. Csl. for respondent has controverted the arguments of Shri Chauhan and has submitted that though the respondent could not bring his evidence but the petitioner is not entitled to back wages as his claim is not supported by an affidavit nor the petitioner has pleaded in support of his claim that he is not employed after his termination.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent society as clerk on 15.1.1996, who continued as such till 31.10.2000 without any break, who was removed from service without any rhyme and reason and without any notice and without payment of compensation and as such his termination is bad in terms of section 25F of the Industrial Disputes Act, 1947. However, **Section 25-F of the 'Act' says that:**

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

14. In the instant case, the respondent has failed to comply with the provisions of section 25F before terminating the services of the petitioner and even no domestic enquiry was conducted against the petitioner by the respondent at any point of time and no notice nor retrenchment compensation in lieu thereof was paid to the petitioner which is illegal, unjust and improper.

15. Thus, having regard to the entire unrebutted evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated w.e.f. 31.10.2000 by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2

16. Since I have held under issue No.1 above that the services of the petitioner have been wrongly and illegally terminated by the respondent w.e.f. 31.10.2000, hence the petitioner is held to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

18. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to how the jurisdiction of this court is barred under section 72, 73 & 92 of the Cooperative Societies Act. Since the petitioner is held to be a workman under section 2(s) of the Industrial Disputes Act, 1947, hence this court has got jurisdiction to try this reference and claim of the petitioner.

Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 2nd March, 2010 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,
*Presiding Judge,
Labour Court, Shimla.*

GENERAL ADMINISTRATION DEPARTMENT
(Confidential & Cabinet)

NOTIFICATION

Shimla-2, the 17th July, 2010

No. GAD-C-F(4)-2/2008.—The Governor, Himachal Pradesh is pleased to notify the Job profile of the officers/officials working in the General Administration Department as per Annexure “A”.

By order,
Sd/-
Secretary (GAD).

**DUTIES AND RESPONSIBILITIES OF VARIOUS POSTS IN THE GENERAL
ADMINISTRATION DEPARTMENT HIMACHAL PRADESH**

1. SECRETARY:

Secretary is the official head of the Department responsible for formulation of policy, programmes, plans, rules etc. and for their proper and effective implementation.

2. SPECIAL SECRETARY :

The Special Secretary is the branch in charge of the sections of General Administration Department and has generally to perform the following duties and functions:

- (i) To go through (and initial with date) the dak received by him and mark the papers to the concerned section and also to give directions for its disposal whenever possible at the dak stage to enable speedy processing;
- (ii) To submit important communication to the superior officer at the dak stage for perusal and directions in case the same has not been seen by the officer;
- (iii) To dispose off receipts of secret/confidential or urgent nature after getting such receipts diarised in the concerned section for further reference;
- (iv) To deal with the receipts retained by him and to scrutinize cases received from the section and either finally dispose off the same at his level if powers stand vested in him under the statutory or standing orders or submit the cases to the higher authorities in complete form;
- (v) To devise from time to time measures necessary for expeditious disposal of business/work in a section; prepare the Annual Action Plan and to monitor and review the progress at regular intervals;
- (vi) To keep a watch over timely submission/receipt of returns/statements and to send the same to quarter concerned duly checked /scrutinized and ensure that all relevant statistical data /information relating to establishment, budget, expenditure, schemes, plans etc. relating to his section/ department and his particular assignment is always kept up-to-date. Also to ensure that all relevant Acts, Rules, Manuals, instructions, Guard file, precedent registers of the Department are kept updated.
- (vii) To maintain liaison with other departments with regard to various activities, schemes, programmes of the department and attend meetings to represent the department as and when directed by the superior authorities and to present the view point of the department as per directions of superiors. After attending the meetings the Branch officer or Middle level officer is required to submit a resume of the deliberations of the meetings.
- (viii) To monitor and inspect the ongoing schemes and suggest ways and means for improvements, if any; prepare, analyse and suggest new schemes, new innovations, improvements for the department.
- (ix) To allocate subjects to different sections under his charge; allocate work of a section amongst various dealing hands in consultation with the Section Officer.

- (x) To train and guide the staff under him and to point out their shortcomings and deficiencies if any, for remedial action.
- (xi) To keep himself acquainted with the morale, conduct and discipline of the staff posted in sections under him; ensure punctuality in attendance by the staff posted in the sections under his charge ;make surprise visits to the sections under his charge to check attendance; to look to the difficulties of the staff; see observance of other instructions by the staff; and carry out periodical inspections of the sections as per provisions of office manual or directions of the authorities and to send inspection reports to the next higher authority as directed.
- (xii) To see that the Section Officers/Superintendents or Senior Assistants working under him hand over/take-over the charge in the manner prescribed in the office manual. The Branch officer can be assigned any other duty commensurate with his status and exigencies of public service.

3. SECTION OFFICERS :

The General Administration Department consists of five sections viz. GAD-A,B,C,D & E.

The Section officer is normally incharge of one section and has generally to perform the following duties and functions:-

- (i) To go through the dak as received by him and take the following steps:-
 - (a) Mark the missent receipts to the concerned sections;
 - (b) Submit the important communications for perusal of the higher authorities through Branch Officer, at dak stage, in case any such communication has not been seen by the said authorities;
 - (c) Retain receipts of secret/confidential or urgent nature which he may like to deal himself in which case the said receipts will be got diarised from the diarist by the Section Officer for further reference;
 - (d) Mark the remaining receipts to the concerned dealing hands with dated initials indicating the urgency and also giving directions, if any, for disposal and to hand over the same to the diarist of the section for diarizing and handing over to the concerned dealing hands;
 - (e) Keep a note in the diary about receipts for watching proper and timely disposal.
- (ii) To himself deal on relevant files, secret, confidential, urgent or complex receipts retained by him and also to scrutinize cases received from the dealing hands and further to dispose off the cases at his own level if so empowered under the standing orders or to submit the same to the Branch Officer with his own remarks or suggestion, if any.
- (iii) To see that the concerned dealing hands collect, compile and keep updated data/information relating to the establishment, budget, expenditure, schemes, plans etc. relevant to his section of posting;

- (iv) To see that the concerned dealing hands monitor, analyse and maintain data as to the achievement of targets of various on-going schemes both in terms of budget provision/expenditure and actual progress and also to suggest ways and means for improvements in the ongoing schemes; and assist the Branch Officer in preparation of new schemes/programmes, new innovations etc.
- (v) To ensure that returns /statements are submitted in time and the returns/statements to be received in the section are received in time;
- (vi) To see that all dealing hands and the diarist maintain all required registers and keep the same updated. He should also check these registers at regular intervals;
- (vii) To see that all routine duties including maintenance and updating of various registers are carried out promptly and thoroughly;
- (viii) To keep a careful watch on any holdup in the movement of dak and files between the section and higher officers; ensure timely submission of fixed date cases, other important cases and papers required by officers and to keep a watch on progress of action; devise from time to time measures necessary for expeditious disposal of work in the section; to make arrangement for disposal of work of officials of the section on leave, training etc.
- (ix) To prepare papers and compile data for meetings and ensure timely submission.
- (x) To be well acquainted with the office procedure and Acts, Rules, Manuals and instructions of a general nature relating to Finance, Personnel and General Administration Department and specifically applicable in the Departments/Section where posted; see that all Manuals, Acts, Rules, instructions Guard files and Precedent Registers of the section are kept upto-date by inserting correction-slips or getting new editions printed;
- (xi) To maintain liaison between the staff and the Branch Officer in various matters; train and guide the staff posted in the section and to point out their shortcomings and deficiencies, if any, for remedial action ;keep himself well acquainted with the morale, conduct and discipline of the staff and also to ensure that the staff comply with Government instructions issued from time to time.
- (xii) To allocate evenly, work of the section to the staff posted in the section with the approval of the Branch Officer and to maintain updated distribution list of work amongst the dealing hands in the section;
- (xiii) To ensure punctuality in attendance in the section and to advise the staff on matters of conduct and discipline. For ensuring availability of staff posted under him on holidays or early or late hours, he should maintain local addresses with phone Nos. of the entire staff with him.
- (xiv) To see that the section is kept neat and tidy and that the files, papers etc. are arranged in an orderly manner; and the recorded files are sent to the record room.
- (xv) To ensure that the dealing hands maintain their Assistant's Diaries regularly and note the particulars of initial submission of cases and also record final disposal of receipts at appropriate stage of final disposal of the cases. He is also required to see

that the interim processing of receipts leading to collection/compilation of data/information is not marked as final disposal in the Assistant's Diaries. Weekly checking of the Assistant's Diaries is also one of his important functions.

- (xvi) On transfer from one Department/Section to another, to hand over the charge and prepare list of important/complicated matters requiring immediate attention of the successor in accordance with the procedure prescribed in the office manual and to see that the officials transferred to or out of the section hand over/take over the charge in the manner prescribed in the manner prescribed in para 10.4 of the Hand book for Assistants and para 15.2.4 of Chapter XV of the Office Manual.
- (xvii) If it comes to the notice of the officer next below the authority who has passed the orders that such authority was not competent to take a decision, it will be his responsibility to bring it to the notice of such authority through the Branch Officer in writing before complying with those orders.

The above duties are of illustrative nature and the Section Officer(s) can be assigned any other duty commensurate with his status and exigencies of public service.

4. SUPERINTENDENTS :

Superintendents Grade-II working in the Secretariat supervise work of some of the dealing hands posted in a section and submit through the Section Officers, but while posted in an independent Cell, they may supervise the working of the entire cell and submit cases direct to the Branch Officer. Accordingly such Superintendents Grade-II of the Secretariat have virtually to perform all the duties and functions of Section Officers given in para above excepting that the Superintendent Grade-II when posted in a Section has not to perform duties as indicated in sr.nos. (i), (Xii), (Xiii) and (Xvii) above, when the Section Officer is there and has to submit the cases through the Section Officer and he can neither finally dispose off any case at his level nor issue any communication under his signatures.

5. ASSISTANTS :

The term "Assistants" includes "Senior Assistants", Senior Assistants(Accounts)" and "Junior Assistants" who deal with receipts and submit cases to the Section Officers or Superintendents. The Assistants are required to compile data, statistics or information and deal matters so as to present complete cases with all relevant data, and information with past precedents and viable/feasible solutions to facilitate the authorities to arrive at a definite decision. The Assistants are thus basic to the administrative machinery. Depending upon urgency, need and public interest, the Assistants can be asked to undertake any job/assignment, but generally, the main duties, functions and responsibilities of the Assistants involve handling of the work relating to:-

- (1) Receipt, diary dispatch, typing record maintenance.
- (2) Various duties in reception and varied assignments in offices of Ministers and senior officers.
- (3) Opening and maintenance of files, referencing, dealing cases including noting and drafting, recording of files, maintenance and updating of various types of data, statistics and information and maintenance of various registers.

- (4) Acquisition, maintenance and up-keep of stores, stocks, stationery articles, accounts and registers;
- (5) Preparation of all types of bills such as pay, traveling allowance, medical reimbursement, contingencies, contractors, suppliers and advances etc. etc. and handling of cash, maintenance of cash books and connected accounts/bills registers etc.;
- (6) Personnel/service/establishment matters, including recruitment and promotion rules, conditions of service, posting, transfers, maintenance of service books, index cards, service records, preparation of leave accounts, pension papers, disciplinary matters, personal files etc. etc.
- (7) Budget preparation including appropriation, reappropriation, supplementary demands for grants, additional grants, contingency fund, all matters relating to Public accounts Committee, Estimates Committee, audit paras, economy in expenditure etc. etc.;
- (8) Assisting in planning and monitoring of developmental social and welfare schemes;
- (9) Regulatory matters such as issue of licences, permits, various types of certificates etc.;

6. CLERKS :

Clerks posted in the GAD sections have to perform duties and functions as assigned to them by the Section Officer/ Superintendent. General duties of clerks are as under:

- (i) To receive the dak from the Central Registry, other sources, give acknowledgement for the same and submit the entire dak to the Section Officer/Superintendent for marking;
- (ii) To diarise all dak in the diary register of the section;
- (iii) to see that communication from V.I.P.s, Assembly /Parliamentary Questions are entered in separate register.
- (iv) To distribute all dak after diarizing to the dealing hands as per marking by the Section Officer/ Superintendent against proper receipts of the dealing hands.
- (v) To procure stationery articles for the Section and to distribute the same.
- (vi) To do type work of the section, neatly, cleanly and accurately.
- (vii) To maintain casual leave account of the entire staff posted in the section.
- (viii) To open files.
- (ix) Properly maintain record and files as required in the Section of posting and to maintain all registers, prepare returns.

7. SUPERVISOR(STAFF CAR) :

He is overall in-charge of GAD workshop as well as keep control on drivers/workshop staff of GAD and responsible to check the repair works of vehicles of GAD in the workshop.

8. Drivers:

These posts are mandatory under the one vehicle-one driver norms to ply the Government vehicles provided to the Ministers/Chief Secretary/ Principal Secretaries/ Secretaries/State-guests/ VIP and other dignitaries.

9. MECHANIC:

The duty of mechanic is to attend the repair work of defected vehicles received at the workshop on every day.

10. BLACKSMITH:

The blacksmith attend the work of hard iron parts of the vehicles which had gone out of order while plying during the course of long journey. They bring them in order by minor denting and welding to make the vehicle roadworthy.

11. FITTER:

The work of fitter is to remove old defected parts of the vehicles pointed out by the mechanic and to fit new spare- part.

12 HELPER:

The helper is required to assist all the above mentioned functionaries at sr.no. 6 to 10. He is also required to assist them in making handy the spare parts from the store of the workshop for speedy disposal of repair work.

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
Keonthal Commercial Complex, Khalini, Shimla-171002

CORRIGENDUM

Shimla-2, 20th July, 2010

In the Notification dated 26th May, 2010, published at pages 997-992 in the H.P. Rajpatra issue dated 29th May 2010, the figure '10.1%' in "**Table-Defined minimum percentages**" under regulation-4 'Quantum of Renewable Power Purchase Obligation (RPPO)' be read as '10%'.

By order,
 Sd/-
Secretary.